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## **Assessment of Laws and Regulations Pertaining to Strata Title in Egypt**

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## EXECUTIVE SUMMARY

### *Introduction*

The term 'strata title' generally refers to a system that permits apartments in a building to be simply defined in a strata plan using a floor plan sketch, and to be easily transferred and mortgaged. Common areas in the building and land used jointly by all apartment owners are generally owned by an association or juridical person comprising the owners of the individual apartments. Strata title generally operates in a Title Registration context, so that a separate 'Certificate of Title' is issued for each apartment.

The laws currently operating in Egypt do not contain a complete framework for strata titles. There is no single statute that attempts to provide a comprehensive framework for strata developments. Although Egypt has a form of Title Registration, it only applies to agricultural land and is not relevant to apartments. Transactions with apartments are therefore processed by deeds registered in the Deeds Registry. The evaluation of strata titles in this report therefore focuses on the extent to which the legal framework permits deeds transacting apartments to be processed in the Deeds Registration context.

### *Key Findings*

- **No registration of apartments on agricultural land** - the construction of buildings on agricultural land is prohibited, unless ancillary to farming the land. Therefore, a block of apartments is considered an illegal construction. As a result, registration offices in agricultural areas will not register apartments or transactions with apartments. Informal processes are used to convey apartments.
- **Some legislative framework for Building Units is awaiting commencement** – the existing Title Registration law for Sigeal El-ainee registries and supporting executive regulations<sup>1</sup> make general reference to defining building units in a plan. The provisions are not yet in operation<sup>2</sup>; however, the legislative provisions will, when operational, provide sufficient authority for creating a "Cadastral Form"<sup>3</sup> for each apartment in the building.
- **Registration of apartments on urban land** – since the Government of Egypt has not yet commenced the operation of Sigeal El-ainee registries in urban areas; urban apartment transactions are processed in the Deeds Registry in accordance with Law 114/1946. A methodology has been developed for the registration of apartment transactions under that Act, using deeds containing detailed prose descriptions of the apartment being sold. As a result, purchasers can, if they choose, register a deed for the purchase of an apartment.
- **The process of registering apartment transactions is flawed** - the effectiveness of the registration process is dependent on the efficiencies of the Registration Office. There are limitations that make the process slow and difficult. For example, the registration process is used [unnecessarily] to police the collection of taxes and compliance with building permit laws. The process relies on a thorough measurement of the internal dimensions of the apartment by ESA, adding time to the process. It was apparent from anecdotal material received during the research that not all deeds for the sale of apartments on urban land are presented for registration. Factors

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<sup>1</sup> See 114/1946 and 142/1964

<sup>2</sup> Ministerial decree not yet made

<sup>3</sup> See Article 58 Sigeal El-ainee number 142/1964. The Cadastral Form is a parcel-based data sheet for a land parcel or apartment, and is used for recording all transactions affecting the land or apartment. Thus it is similar in concept to the certificate of title

cited were that (i) the owner in possession is perceived as secure without registration; (ii) the registration process is slow and expensive, requiring the buyer to make several visits to various offices; (iii) even if mortgage finance is required, a registered purchase is not necessary; (iv) purchasers fear that the registration process will alert the Tax Department and expose them to the collection of future taxes. It was estimated that these factors discourage 90% of apartment buyers<sup>4</sup> from registering transactions.

- **Difficult process for defining the apartment being sold** – because there is no provision for either a detailed plan defining apartments in buildings or for establishing a public repository of building plans, practitioners have resorted to using lengthy prose descriptions in the deed of sale. The resulting apartment description takes several pages [see an example in *Appendix 3*]. There is a practice of preparing a section plan of the building footprint and lodging it with the EDO with the first apartment sale in the building. This plan is not an adequate basis for defining the various floors of the building or for defining and numbering the apartments in the building. It does not effectively define common property. It is not generally considered a public record and is not easily accessible. Nor does it set out the individual apartment boundaries and areas. It is therefore not a sound basis for Building Unit Title [the terminology used in this report to describe potential apartment registration processes in Egypt].
- **Buildings can be constructed in stages** - The law and planning approval process recognize that buildings for apartments can be constructed in stages. This generally involves the addition of more storeys to the building after the first part of the building has been occupied. However, the legal framework for implementing this concept is not well-developed. The definition of development lots, the vesting of common property etc are not clear. Issues such as the creation of future common property and changing the existing shares of ownership of common property of first stage owners are not addressed in the laws.<sup>5</sup> Another weakness in the staged development process is that the construction of a second apartment building constitutes a division within the Planning Law, resulting in a severance from the initial strata scheme.
- **No bare strata title** - There is no specific statutory provision for the creation of a subdivision that incorporates both vacant real estate parcels and another vacant land parcel which is to be held in common by the lot owners. This concept is popular in other countries because it provides great flexibility in the subdivision process, to create lots and shared common property to be used for access and recreation etc. Terminology is defined in the report.
- **No provision for conversion of existing buildings** – the current operational legal framework operating in Egypt does not effectively provide for the conversion of existing buildings to Building Unit Title. However, non-operational provisions make reference to the conversion of buildings from the Deeds Registry to the Title Registry. The Executive Regulation for Siqueal El-ainee for law 142/1964 contains the draft conversion provisions in Chapter 2 of the regulation dealing with first registration. These were drafted with emphasis on agricultural land but they also touch on urban land, and should be revisited in relation to urban land. This is another area where the project can assist the Ministry of Justice.
- **Conclusion is that the framework for registration of apartments is not adequate** – the piecemeal approach in the legal framework and the partial implementation of processes lead inevitably to the conclusion that the legislative/ regulatory framework is not adequate and that registration procedures do not provide efficiency in processing apartment transactions. The

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<sup>4</sup> Statistics mentioned in research meetings but not assessed by the adviser. In a meeting with a real estate finance company with a portfolio of hundreds of mortgages, not one of the apartments in the portfolio was registered. See also later comments on the Baseline Study

<sup>5</sup> The share of common property of owners of the first stage is diminished when the second stage is sold. However, the common property expands and so does the liability of the owners of lower storeys to maintain common property above them. This is already a source of conflict in single stage developments

transactions suffer from the existing deficiencies of the registration of deeds process; apartments are defined by inspection, measurement and compilation of a detailed prose description of directions and distances, even if this duplicates similar measurement for the previous sale; and the fact that many people resort to the informal transfer system rather than registering deeds transacting apartments, support this finding. The report therefore recommends changes to both regulations and statutes.

### ***Key Recommendations***

- **Reform in stages is recommended** – instead of recommending a major legislative review at the outset, the Report proposes: (i) The preparation of regulations in consultation with industry groups. Regulation change can be developed before the projected start of the project's pilot activities, whereas a major revision of a law requires a longer time frame. (ii) The regulations and supporting explanatory material can be developed in synchronization with the design and implementation of the Project's pilots. If the pilot design thus includes testing the application of a Title Registry<sup>6</sup> in an urban area, the recommended building unit plan concept could be tested in the pilot. The project pilots can then trial either (a) the use of building unit plans in a streamlined, parcel-based Deeds Register, or (b) the application of Siqueal El-ainee and the use of Building Unit Plans in a Title Register in urban areas. Following testing, the concept can be revised before more extensive implementation is undertaken; (iii) in the light of the pilot outcomes, commence the application of the new processes on a broader basis and begin the longer-term process of drafting legislative proposals for legislative reform.
- **Short-term reforms** – regulations/ ministerial decrees are recommended to achieve the following prior to the commencement of the project pilots in April 2006:
  - (i) *Provide a framework for preparing Building Unit Plans* – amend Chapter 3 section 2 of the Executive Regulation for Siqueal El-ainee for Law 142/1964 to provide more detail on the format of the building unit plan. This framework should also apply to apartments in the Deeds Registry. The regulation should permit a building unit plan to describe apartments in a floor plan, eliminating (a) lengthy deed descriptions, (b) the inadequate plans currently filed at ESA, and (c) detailed measurement by ESA in each transaction. Additional detail on the content of the building unit plan is contained in the description of key principles of strata title below, in the summary in Appendix 2 and in the samples in Appendix 6.
  - (ii) *Update the first registration procedures* – amend Chapter 2 of the Executive Regulation for Siqueal El-ainee for Law 142/1964 to clarify how the new building unit plan concept fits with the first registration process envisaged for urban land.
  - (iii) *Update and streamline Registration Office procedures* – these are contained in regulations to Laws 114 of 1946 and 142 of 1964. The substance of these reforms will be provided in reports by other advisers.
- **Long-term reforms** – the proposed regulation will commence the major process of transitioning towards improved apartment transactions in urban areas. However, it is recommended that the regulatory changes in the short-term should be strengthened and underpinned by statutory reform. The changes will focus on the Civil Code 1948, the planning law and the 1946 and 1964 laws for Registration Offices described in this report. The changes should address the relationship between a building unit plan and the planning law, taxation law etc, so that Building Unit Plans require planning approval. They will also address inadequacies in the management provisions relating to joint property in a block of apartments, such as (i) replacing partnerships of apartment owners in the Civil Law with a Building Units Association which will be a juridical body comprising all owners

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<sup>6</sup> *Siqueal El-ainee under law 142 of 1964*

for the time being of apartments in the building; (ii) vesting the common property in the Building Units Association; (iii) permitting management by-laws to be made and to be recorded in the register so that all purchasers are aware of their rights and obligations; (iv) strengthening the disclosure provisions such as requiring conditions of planning approval that bind apartment owners under Article 23 of Urban Planning Law 3/1982 to be disclosed in the register; (v) providing for bare strata plans; and (vi) improving the staged development framework.

- **Extensive consultation required** – although the Ministry of Justice will have primary responsibility for drafting the regulations, the reforms to procedures will impact on a wide range of stakeholders in both government and industry. Also the reforms will affect a large percentage of the community owning or living in apartments. The report lists the stakeholders likely to be impacted by the changes. It suggests that once the broad reform is endorsed in the Ministry of Justice, a summary of the proposals should be circulated to industry groups to begin the consultation process. The project could provide inputs in the drafting of discussion papers, instructional material and sample documentation. The proposed pilots could also be structured to test the proposed building unit plan concepts prior to broad implementation.

## 1. Objectives of Consultancy

In this short-term consultancy, the adviser has the following role and tasks:

- To prepare an independent assessment of GOE's laws and regulations pertaining to strata title (appropriately re-defined to fit the local context);
- Ascertain whether strata title is covered under current law, and if so to what extent;
- Identify whether new strata titles can be issued under current law;
- Describe whether strata conversions of previously occupied buildings can be effected under current law;
- Address whether phased strata applications can be accepted to allow buildings on a site to be constructed in sequenced phases;
- Address whether and to what extent current law enables bare land strata subdivisions.
- Illustrate international best practices and identify key legal principles pertaining to strata title.

It has been necessary to redefine the terminology used in the scope of analysis by the adviser and these have been defined in the report.

## 2. Methodology

### 2.1 General Approach

The approach has been to undertake the following steps during the 12 day assignment in Cairo:

- To identify laws affecting the definition, sale and mortgage of parts of a building.
- To identify general legal concepts which affect the ownership of buildings on land or airspace above the surface of land. Ascertain (i) the extent to which the owner of land automatically owns buildings and other structures on the land; (ii) the extent to which the owner of the building on land can be different to the owner of the land on which the building sits.
- Within the two types of registry existing in Egypt, determine to what extent the law permits (i) the definition in a plan of parts of a building; (ii) the right to transfer/ mortgage part of a building; (iii) the issue of a Cadastral Form for the defined parts of a building.
- Identify the extent to which the general concept of joint/ common ownership of a land parcel is recognized in law and the rights of such owners. Where a single land parcel is owned by two or more owners, determine what rights apply. Determine if a joint owner has a share of the total land parcel, owning in effect the entire unseverable land parcel in specified shares.
- Ascertain whether the ownership of land by co-operatives is recognized.
- In the light of the above, to review the links between the *legal framework* for strata title and the *administrative framework* for implementing strata title. In this regard, project staff assisted in identifying and obtaining laws available in English. These have been studied and, where time permitted, discussed with staff. Site visits were also undertaken to three Registration Offices and to a district Egypt Survey Authority office. Discussions were also conducted with lawyers engaged in transactions with apartments, with two representatives of a mortgage finance company, with a broker representative involved in buying, selling, leasing and managing apartments and blocks of apartments and with an apartment owner experienced in buying/ selling/ leasing and managing



apartments. Discussions were also undertaken with officials of the Ministry of Justice, which is responsible for formulating regulations pertaining to the registration of apartments. A list of relevant activities including meetings and site visits is set out in *Appendix 4*.

- In the light of this input, the adviser reviewed existing laws in order to evaluate the legal framework and to answer the questions described above in the objectives of the consultancy. A Table summarizing in general terminology some of the legislative concepts and principles was created as a tool for further research. This is set out in *Appendix 1* as a guide for future researchers into the legal framework. It may be freely cited by subsequent advisers.<sup>7</sup>
- The next step was to identify (i) short-term reforms that can be put in place in the near term to support the pilot activities planned to be undertaken in Task 2 of the project. In specifying short-term reforms, the adviser focused on regulatory reform to clarify areas of uncertainty or to provide new procedures permitted by the existing legal framework, with the aim of simplifying the strata processes. In longer-term reforms, the adviser flags amendments to statutes to provide a stronger base for strata title activities. These reforms are listed in the report and summarized in *Appendix 2*.

Due to the short time frame of this assignment, this report is not intended to be used by external lawyers and institutions on how to transact apartment titles in the Registration Office, nor as a guidebook to developers and financiers on how to undertake apartment developments under the existing law. Nor is it a guide to building managers on how to manage common facilities and partnerships owning common areas under the existing law or a submission to authorities of proposed legislative reforms. Rather it is an internal report to the project to begin the process of evaluating the legislative basis for "Building Unit Title" in its various forms and to highlight general concepts from an international perspective.

However, the adviser does identify the next steps to be taken in developing appropriate reforms pertaining to strata title. During the course of the consultancy, some issues were flagged but not investigated. These are listed, so that they can be further researched.<sup>8</sup> The conclusions and recommendations in this Report can be updated in the light of outcomes of that research.

Because the impact of changes will be widespread and will affect the activities of a range of stakeholders, the report flags the interest groups that should be consulted in the reform process.

## **2.2 Defining terms**

Two types of registration office exist in Egypt. First the Deeds Registry [Sigueal El-shaksi], operating under Law 114 of 1946, registers transactions with urban land in cities and within town and village boundaries. Second, the Title Registry [Sigueal El-ainee], operating under Law 142 of 1964, registers agricultural land outside the boundaries of cities towns and villages. To distinguish these, the terms 'Deeds Registry' and 'Title Registry' are used in the text, with the Arabic transliteration often shown in the footnote to avoid confusion, particularly during translation.

It is apparent that often different terms are used concerning the development of apartments, and that potential for misunderstanding exists. For example, the adviser's scope of work uses the terminology of strata titles. That concept is used extensively in Australia, Canada and some other countries to describe the process of dividing blocks of apartments into separate parts of buildings for separate ownership by means of a 'strata plan'. Thus a 'strata corporation' or strata body corporate, being a juridical person

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<sup>7</sup> The adviser benefited from general discussions with the Project's Real Property Legal Advisor Richard Gaynor, who provided valuable insights into the laws and their operation.

<sup>8</sup> Then the proposed reforms can be packaged into a discussion paper for more general circulation, as a basis for receiving industry and stakeholder input into a firm set of proposals for regulatory reform in the short-term and for amendment of key statutes in the long-term.

formed automatically upon the registration of the plan and consisting of all owners of the apartments in the building, is created under the law. Common property is vested in the juridical person. Generally, strata title occurs in the context of Title Registration, with a form of certificate of title issuing for each apartment. Other jurisdictions use condominium titles based on condominium plans, resulting in the creation of a corporate body of apartment owners known as a condominium association.

However, the above terminology is not widely used or understood in Egypt. For simplification and clarity, the adviser opted to use the term a 'Building Unit Plan' [instead of condominium plan] to divide blocks of apartments into 'Building Units', illustrated in the plan, so that, should the Title Registry be introduced in urban areas, a separate page of the Title Register<sup>9</sup> can be created for each separate apartment (to record the current ownership and encumbrance details). When reference is made to a block of apartments, it means a single medium or high-rise building containing separate apartments.

The term Building Unit was chosen because it is prominent in the English translation of the Executive Regulation under Siqueal El-ainee for Law 142 of 1964. Moreover the same regulation contains provisions that permit the definition of building units, meaning separately owned apartments in a block of apartments. It envisages that when Law 142 of 1964 is applied in urban areas building unit plans are required to define individual apartments, and that a separate page of the Title Register<sup>10</sup> will be created for each apartment.

Reference in the regulation to a separate page of the register and also to a Cadastral Form should be understood as meaning the certificate under section 58 of Law 142 of 1964 in the Title Register.

The term "common property" in relation to a building of separately-owned apartments is used interchangeably with joint property in the common areas of the building. Both refer to the property owned in common with all owners of the apartment by virtue of Article 856 of the Civil Code/1948.

Where the term "registered" is used in relation to the Deeds Register, it refers to the registration of a deed and not to registration of the land [which under the Siqueal El-ainee regulation and procedures, means the act of registration of the land following adjudication and the issue of a Cadastral Form to complete the process of registration].

### **3. Findings**

#### ***3.1 Assessment of the laws and regulations for Apartment Transactions***

##### ***3.1.1 Introduction to the titling provisions relating to apartments***

The streetscape in Cairo demonstrates that apartment-type dwellings are a predominant form of housing. It is therefore important that an effective legal basis for creating title to separate apartments and for buying, selling, mortgaging and leasing such apartments be available. Research indicates that in urban areas [where the Deeds Registry<sup>11</sup> still applies], a process has evolved for setting up apartments and transacting with separately owned apartments. Transactions are by deeds registered in the Deeds Registry. However, the extent of registration of apartment transactions in the deeds system remains extremely limited with estimates less than 10% of total transactions<sup>12</sup>.

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<sup>9</sup> *Siqueal El-ainee under law 142 of 1964*

<sup>10</sup> *Siqueal El-ainee*

<sup>11</sup> *Siqueal El-shaksi under law 114 of 1946*

<sup>12</sup> *General estimate arising in discussions but not accurately researched. In a meeting with a mortgage finance broker with a portfolio of mortgages over separate apartments, not one of the apartments was registered*

The Civil Code provides assistance by providing a form of joint ownership of common areas in a block of apartments by a partnership or union of apartment owners.

Article 81 of the Civil Code 1948 defines land as including buildings/ fixtures on the land that cannot be moved without damage<sup>13</sup>. See also Article 922 which provides that all buildings plants and 'installations' on the land are considered to be made by the land owner and acknowledged as the land owner's property. However the Article recognizes that the landowner can give ownership of an installation to a third party. But if it cannot be removed easily without any damage to the structure it belongs to the landowner. See also Article 803 – the ownership of land comprises all that is on and under the land to the extent that it is useful for enjoying the land. However, note that the ownership of the surface and subsurface may be expressly separated.

It appears from these provisions that there is a general principle that the ownership of the land by its nature includes ownership of things on the land that cannot be removed without damage. This generally relates to apartment buildings which are substantial and not capable of removal. However, it is apparent that the land and the building can be separated and conveyed to separate owners, a provision that may cause confusion for apartment buyers. There is an element of risk for purchasers of an apartment, that the land has been conveyed to another owner and that the apartment owners do not have rights over the land. Current practice relies on the diligence of the buyer or the person preparing the contract to identify, on the site of the building, the exact nature of the rights being purchased. A lawyer practicing in the field of registration suggested this is not common practice. However, this report recommends that before Building Unit Plans are registered, ownership of the land and building should be merged in the same person.

There is no single statute that provides a comprehensive unified framework for apartments, their development, registration and management. The adviser had to consult a range of Acts, Decrees and Regulations to complete the analysis in this report. For further detail, see **Appendix 1**.

### ***3.1.2 The definition of apartments in buildings***

*Financing Stage* – the laws recognize that the developer may not always be the owner of the land being developed. The area of developer financing is being clarified in Task 1 and is outside the scope of this report.

#### *Planning Stage*

Planning approval is required for any division of land into three or more lots or by the construction of more than one building. Article 11 of Planning Law 3/1982 defines such divisions. In that Article, the construction of a second building on the land parcel divides the land and requires approval. The operative provision is Article 12, which requires planning approval of all divisions of land. Also Article 25 requires the developer of a building to comply with these requirements.

The Planning law envisages staged subdivision processes, both of land and of buildings.

Article 33 of the Ministerial Decree 600/1982 implementing the Urban Planning Law requires a survey map at 1:5000 scale detailing the location of the land and streets. A map at scale 1:1000 then sets out the division of land showing north orientation, land parcels with number, dimensions and area. Lots must be connected to a public road<sup>14</sup>. However, Regulation 2 to the Law Directing and Organizing Building Works 106/1976 contains reference to the use of private roads. These survey requirements will apply to 'bare strata plans' creating common property referred to below.

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<sup>13</sup> Things settled and affixed in place on land such that they cannot be removed without damage are realty. Other things are movables.

<sup>14</sup> See Article 41

Article 23 of Planning Laws 3/1982 requires contracts for the sale of land to refer to the new subdivision status in the decree and must set out the conditions of approval contained in the decree. Article 59 of the Implementing Decree Number 600/1982 expands this by stating that a development application may contain conditions such as (i) acknowledgement and acceptance by buyers of the total development package (to facilitate rather than hinder it); (ii) conditions to regulate activities to make it a suitable residential environment ('to add to the welfare of residents and to avoid disruption of residents'); (iii) the use of buildings, control of construction, architectural control, minimum cost of buildings to be constructed on the land, building set backs, prohibited constructions, noise control, animal control and disposal of waste and rubbish. This Article provides a significant tool to the initial developer, to set out conditions, rules and by-laws to bind future purchasers and to regulate the affairs of the apartment building. This is similar in impact to by-laws accompanying strata plans in other countries.

### *Construction Stage*

Law 106/1976 Directing and Organizing Building works provides that no building construction will occur without approval of the committee established by the Minister for Housing and Reconstruction referred to in the law and without a building permit <sup>15</sup>.

Article 12 provides that the sale of any unit affected by the law must contain certain information, including details of the building license number, the number of storeys, the number of units, provision for car parking, elevators etc. This again re-enforces the power in the planning law for the developer to impose conditions.

### *Plan to illustrate apartments*

The law does not provide a simple format for illustrating apartments in buildings. There is no specific requirement for lodgment of a plan of the building and there is no public repository of apartment plans. The existing process in the Deeds Register is to attach a section plan of the building footprint to the first deed of sale of an apartment. This is not retained in the Registration Office but is filed in EDO records. It is not sufficient to define apartments because (i) it does not show the total number of floors and apartments (ii) it does not clearly indicate apartment numbers (iii) it does not adequately illustrate the land parcel on which the building sits and therefore does not identify adjoining land and roads and does not illustrate all common areas (iv) it does not attach a schedule allocating to each apartment a definite share of common property. (v) it does not provide an easy method for attaching to apartment areas on the land parcel parking or areas within the basement for garaging and storage (vi) it does not adequately provide a process for defining future stages where the development is to be phased.

The main attraction of the process of defining apartments in Deeds Registry transactions is flexibility. There is no well-defined process. But the associated weakness is uncertainty. This Report recommends introducing the concept of a Building Unit Plan to add certainty.

### **3.1.3 The registration of apartment transactions**

#### *Apartments on agricultural land*

In general terms, agricultural land is the land external to urban agglomerations excluding the land within the boundaries of villages and towns [which is treated as urban land]. In agricultural areas, the GOE has since 1975 been converting the registries from deeds to title<sup>16</sup> under the initial registration procedures defined in the Executive Regulation to Law 142/1964. An estimated 80% of agricultural land has been processed under this provision. Transactions on registered land are therefore generally processed in the Title Registry.

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<sup>15</sup> See Articles 1 and 4

<sup>16</sup> From *Sigueal El-ainee* to *Sigueal El-ainee*?????

The construction of an apartment building on agricultural land is prohibited in the law<sup>17</sup>. Within the RO, a Cadastral Form under Article 58 will be created for the land under the building. No individual Cadastral Form will be prepared or issued for an individual apartment located in a rural area. The RO operating under Sigueal El-aine will therefore refuse to register a deed transferring ownership of an apartment in such an area. This restriction effectively prevents the registration of sales and mortgages in the formal register but has the effect of forcing the transactions to remain off register in the informal market, which accepts preliminary contracts as sufficient documentation of a sale.

#### *Apartments on urban land*

The GoE has not yet commenced the operation of Sigueal El-aine registries in urban areas. Apartment transactions in urban areas are therefore processed in the Deeds Registry in accordance with Law 114/1946. The 1946 Law does not limit the type of land that may be conveyed and does not prevent the registration of deeds of sale of apartments. A methodology has been developed for the registration of apartments under that Act, using deeds containing detailed prose descriptions of the apartment being sold. As a result, purchasers can register a deed purchasing apartments.

Although transactions with apartments on urban land can be registered, effectiveness of the process is affected by a number of factors:

- There is no simple method for defining the individual apartments, as discussed above. Practitioners resort to using lengthy prose descriptions in the deed of sale. The resulting apartment description takes several pages and adds complexity. An example is set out in **Appendix 3**. However, there is a practice of preparing a section plan of the building footprint and lodging it with the EDO with the sale of the first apartment in the building. This plan is not an adequate basis for defining the various floors of the building or for defining and numbering the apartments in the building. Nor does it effectively define common property. It is not generally considered a public record and is therefore not a sound basis for Building Unit Title. This report recommends the preparation of a regulation prescribing the procedure for preparing and registering a Building Unit Plan.
- Despite the detailed description, the process relies on a thorough measurement of the internal dimensions of the apartment by ESA, adding time to the process. Each time a deed of sale of an apartment is presented for registration, an EDO team will visit the apartment and thoroughly measure the apartment and check the technical description. Even if the description has not changed since the last measurement by EDO, the process is repeated.
- The registration process is affected by the inefficiencies of the Registration Office. There are limitations that make the process slow and difficult. For example, (i) a deed of sale of an apartment cannot be registered if there are arrears in taxes; (ii) a sale can't be registered if the apartment block was constructed without a building permit; (iii) the process is slow and expensive, requiring the buyer to make several visits, including to the Registration Office, the District Egyptian Survey Authority Office and in some cases to the Tax Department;
- There is a perception that the owner in possession is secure without registration. This has some support in the law, as adverse possession can be established after 15 years (but not against state owned land);
- Even if mortgage finance is required, a registered purchase is not necessary. It was estimated that these factors discourage 90% of apartment buyers<sup>18</sup> from registering transactions;

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<sup>17</sup> see Article 2 of the law promulgating the Planning Law 3/1982

<sup>18</sup> statistics mentioned during research meetings but not accurately assessed. In a meeting with a real estate finance company with a portfolio of over mortgages, not one of the apartments in the portfolio was registered.

As indicated above, some legislative provisions impacting on apartments on urban land have been enacted but are not yet in force. The laws and regulations envisage the definition of building units in a plan. This report recommends that detailed regulations be promulgated to support the registration of a Building Unit Plan.

#### *Leases of apartments in urban areas*

The position of registration of leases is confusing. Various laws flagged in the Table in **Appendix 1** suggest that (i) leases exceeding 9 years must be registered; (ii) all leases must be registered. This confusion was reflected in interviews, with one practitioner stating that it was obvious that he would register a lease with another taking the opposite view and asking why he would bother to register leases? Identifying leases affecting apartments will be a major part of the initial registration process for converting apartments from the Deeds Registry to the Title Registry.

#### **3.1.4 Management provisions relevant to apartments**

There are several Acts that, when taken together, provide a framework for the management of apartment buildings. The law is supported by the provisions of the Civil Code dealing with common areas. The relevant Articles are highlighted in the Table in **Appendix 1**. The Articles provide the following framework for the management of common areas in the building:

- The owners of the various apartments are considered to be the joint owners of all the jointly used parts of the building, such as structural walls and walls between apartments, land external to the building, entrance halls, roof passages, service pipes etc. The owners are not compulsorily treated corporately as a juridical person within the meaning in Article 52 of the Civil Code. In other countries, a condominium association/ homeowners' association/ strata company etc is created automatically upon registration of the plan. (See comments below on the voluntary Building Apartment Owners' Union which is deemed a juridical person).
- The common property is owned in its entirety by the common owners and the shares are indivisible<sup>19</sup>. The share of common property cannot be transferred independently of the apartment, therefore the responsibility of contributing to the maintenance of the common property cannot be assigned.
- The walls between apartments [but not the floors] are considered common property of the adjoining owners. It is not clear if this means that ownership of the entire wall is joint and indivisible or whether each owns to the middle of the wall.
- Owners of apartments must contribute to the maintenance expenses according to the size of the share of common property. The size of the share is determined by the relative appraised values of the apartments.
- Amendments to common property can be undertaken jointly but not by one owner without consent, unless the change is paid for by that owner and improves the value and usefulness of the common areas.
- Apartments must be used in a way that does not interfere with the enjoyment of the other occupiers.

The provisions also address insurance, the collapse of the building, keeping structural walls in repair, and prohibiting changes to upper storeys that threaten building integrity. Decisions and meetings are not covered in this section but are covered in the voluntary Building Owners Union provisions below.

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<sup>19</sup> the share is a part share of the whole of the common property not the whole share of a specific part

Owners may voluntarily establish a union of owners to be responsible for the day-to-day management of the common areas. Ministerial Decree 109/1979 states that the association is a juridical person<sup>20</sup> makes simple provision for forms and procedures where an owner opts to join the union. The following apply to the Union:

- Powers of the union include to establish rules for the orderly management and day-to-day operations of the building. This in effect permits management by-laws to be prepared.
- Decisions may be made at meetings by majority vote <sup>21</sup>
- Power to take out insurance
- Appointment and payment of a delegate
- Lending to an apartment owner and taking a lien over the apartment

Other Acts impacting on the management of apartment buildings and day-to-day regulation have been flagged above in the sections dealing with planning and construction. These permit conditions binding purchasers and restricting the use of their lots to be made during the planning process. These include: permitting subsequent stages; regulations to make the development suitable for a residential environment; regulations to avoid disruption and promote the welfare of residents; limitations on the use of buildings; construction; architectural control; minimum cost of buildings; building setbacks; noise control; control of animals; disposal of waste and rubbish; limits on the number of storeys; parking control; use and maintenance of elevators; etc.

The management provisions enable a starting point for the management of apartment buildings, a basis for meetings, decision-making and collection of contributions to maintenance and the use of development regulations to regulate the actions of owners..

However, the management framework has the following weaknesses:

- The laws are not coherent and unified and thus may not be apparent to developers and apartment owners. Instruments seeking to control future buildings/ extensions/ parking, noise and use of common property should be recorded on the Cadastral Form or flagged as part of the Building Unit Plan. This will provide more effective notice to purchasers.
- The size of the share and thus the percentage contribution to apartment owners is not always clear. It would be improved by requiring a schedule of shares be attached to a plan defining the apartments and common property. The shares can be assigned by the developer according to the estimated value of the shares<sup>22</sup>.
- The union of Building Unit Owners is voluntary<sup>23</sup>
- There are no standard by-laws or management rules that automatically apply to the block of apartments to bind all owners and residents

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<sup>20</sup> within the meaning in Article 52 Civil Code 1948

<sup>21</sup> unclear if this is the majority of voters actually attending the meeting, the majority of apartment owners in the building, the majority of the apartments in the building or votes by owners of more than 50% of the common property; but see Article 828 of the Civil Code which may require the majority of votes by value of the share of common property.

<sup>22</sup> lack of awareness was raised in a meeting

<sup>23</sup> In the Guidelines for Condominium Ownership for Housing For Countries in Transition<sup>23</sup> reference is made to the importance of the condominium/ homeowners' association: "An owners' association is considered essential to safeguard the interests of individual owners, the common ownership, and national and municipal interests. The existence of this legal provision is very important for the success of housing reform and privatization in countries in transition".

- The size of the share of jointly-owned common areas is not clearly established, which can cause conflict over the size of contributions to repairs;
- The dispute resolution provisions are not well-developed; and
- It is difficult to enforce the payment of contributions towards the maintenance of the building.

### ***3.2 Evaluation***

In the light of the above analysis, the piecemeal approach to strata legislation is both inefficient and ineffective. Although there is some flexibility in Deeds Registry processes, the concern to the buyer is uncertainty. Because deeds are used to transact apartments on urban land, the process inherits all the deficiencies of the deeds system [storage and retrieval of records can be inefficient; the Registry does not operate on a parcel base with index maps so information is not stored together but scattered; need to search numerous indexes to find the details about the land. Off record informal transactions proliferate]

The overall effect is that strata title under the existing processes is not robust and is in need of strengthening. The report sets out the recommended changes in Chapter 5 and *Appendix 2*.

### ***3.3 Specific Questions pertaining to Strata Title***

The above analysis is a preliminary review of the question to what extent is strata title covered in the existing law? Some specific questions are now addressed.

#### ***3.3.1 Is Strata Title Covered under the Existing Law?***

There is no comprehensive or unified legislative coverage of Building Unit Title. However, an adequate framework exists for straightforward developments in urban areas. A pragmatic approach has been adopted to register transactions in the Deeds Register that does not impose extensive requirements on apartment transactions. A way to transact has evolved. It requires strengthening the technical processes and this can be done in stages. The recommendations are described in Chapter 5. The framework in place in the current law will break down if and when the government decides to convert land in urban areas from the Deeds Registry to the Title Registry. The existing Siqueal El-ainee law and executive regulations<sup>24</sup> make general reference to defining building units in a plan and these are examined in this report. The provisions are not yet in operation<sup>25</sup> but can be used in the next steps towards establishing a system of Building Units Title. There is scope for the project to assist the Ministry of Justice to simultaneously prepare for the pilot projects and draft supporting regulations. That framework, if extended to urban apartments, will permit a Cadastral Form to be prepared for each apartment. However, the process for defining apartments on Building Unit Plans remains unclear. The recommendations therefore address the need for a Decree or Regulation permitting the use of a Building Unit Plan.

#### ***3.3.2 Identify whether new building unit titles can be issued under the existing law***

This report has indicated that there is not a comprehensive strata title framework that permits new buildings to be defined in a unit building plan or to receive the equivalent of a certificate of title for each apartment. New buildings in urban areas can only be processed under the piecemeal processes in the Deeds Registry. The Government of Egypt should either significantly improve Deeds Registry processes or extend title registry methods to urban apartments.

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<sup>24</sup> See 114/1946 and 142/1964

<sup>25</sup> Ministerial decree not yet made



### ***3.3.3 Can conversions to Strata Title be implemented under the Law?***

The question can be understood in two ways: (i) Can apartments under the Deeds Registry laws be converted to the Title Registry Laws? (ii) Can buildings in single ownership be divided into multiple ownership, with each apartment being separately registered?

#### *Conversion from Deeds Registry to Title Registry*

This cannot be achieved under the law currently in operation, as Title Registry laws do not yet apply in urban areas. However, the legal framework is in place to extend Title Registration to urban areas. All that is required is issuance of a Decree by MOJ under Law 142/1964. The Executive Regulation to that law envisages that building units (apartments in a block of apartments) can be separately defined. Regulation 113 will then permit a separate Cadastral Form to be prepared for each apartment. The Cadastral Form is a form of the certificate of title used in some other countries.

If the Government of Egypt elects to extend the Title Registry provisions to urban areas, there is a process for the 'initial registration' of land, which in effect converts Deeds Registry land to the Title Registry. The initial registration processes for buildings are in place; but this report recommends that they be amended.

#### *Conversion of building in single ownership to multiple ownership*

This can occur in Egypt by using a deed to separately define and transfer the apartments. The first sale is a significant transaction and triggers the following:

- Lodgment of a type of plan in EDO showing the building footprint. This is not a suitable Building Unit Plan for reasons set out in this report
- An inspection by ESA staff that will generate a detailed description of the apartment illustrated in **Appendix 3**.

### ***3.3.4 Phased Strata Developments***

Some developers wishing to lower development costs may propose that an apartment complex be undertaken in stages. Apartments in the first building can be sold to finance the construction of a second building, and so on. The intention is generally that, in second and subsequent stages, additional facilities on common property will be created to benefit owners in the first building. As funds become available from early sales, the resources to provide passive and active recreational facilities are available.

The planning law and construction law envisage staged development of buildings in their approval processes. Relevant provisions were examined above. However, the apartment definition, registration and management laws do not adequately provide for staged developments. In addition, the staged development provisions do not clarify (i) who has the right to add extra storeys to a building (ii) what disclosure is to be made to the first purchasers (iii) when the plan is approved, is a revised building plan lodged with the registration authority? Who does the expanded common area vest in? (iv) impact on the value of the existing lots – there is increased usage of the common areas (v) Does the existing common property vest in the purchasers of the newly added apartments? (vi) are existing owners required to pay for the upkeep of the additional common property?

A further disadvantage of the existing framework is that Article 22 of the Planning Law 3/1982 prohibits sales "off the plan". The report recommends a single framework for staged development in the long-term legal amendments.

### ***3.3.5 'Bare strata' developments***

Existing law does not provide for the creation of a survey plan providing for building lots and common property lots. This is a fundamental requirement of 'bare strata' developments. Such developments are becoming increasingly popular in other countries because of the flexibility they add to the development of land. An example of a bare strata scheme is a subdivision creating:

- Vacant lots on which individual dwellings may be constructed [the developer may actually construct the buildings or sell lots without buildings but subject to building covenants specifying minimum building standards]
- A common property lot or lots containing passive and active recreational facilities for owners of the bare strata lots.

This legislation would form the foundation of gated communities and secure access estates. In mixed use developments containing commercial and residential elements, the public will have access to some public facilities and yet be excluded (by gates or other security measures) from the private residential areas. A mix of public and private roads and common property will provide required flexibility.

Sample plans (tending towards simple rather than complex development) are attached in **Appendix 6**.

If 'bare strata' title is required, specific legislative reform is recommended (i) providing for common property lots; (ii) vesting the common property lot in a homeowners' association; (iii) permitting the use of management by-laws and covenants to regulate the development; and (iv) applying the management provisions in the Civil Code to the project.

However, there is provision for public and private roads in (Steve is this a Law or Executive Regulation?) 106/1976 and this could be used for simple bare strata developments where the only common property is the private road. Then the only remaining difficulty is the lack of a provision vesting the private road in the owners for the time being of the lots in the bare strata plan.

## **4. Key Legal Principles of Strata Title**

### *Introduction to Concept*

Vertical and horizontal division of land with common property and a homeowners' association.

1. Building strata – to be used to create apartment lots where the lots are fully or predominantly within a building or buildings. Examples will be apartments, attached dwellings, townhouses, villas etc. Such building strata lots can be defined as cubic space lots limited by physical features [walls floor and ceiling] by reference to a floor plan
2. Bare strata – where it is proposed to create lots and common/ shared property and the lots are not within a building. An example will be a plan creating 10 homesites and common property for shared facilities such as access, a swimming pool and tennis court.

The following draws on key principles for apartment buildings and bare strata plans used in other countries. Especially when operating in a registration of title context, strata title simplifies ownership of part of a building – the process of buying selling and securing finance against individual apartments. Creation of a strata lot by a strata plan permits exclusive ownership rights, separate title, separate services and meters, separate rating and taxing. Utility lots that may not be adjoining the residential lot can also be created, generally non-occupation lots for storage, parking etc. The issue of a certificate of title confers all the benefits of a registered title. The main features are:

- Lots (apartments) are cubic airspace lots not defined by survey dimensions or other measurements but defined by physical features such as the walls, floors and ceilings in which they are situated.
- Creation of common property – areas where lot owners have common or shared rights. Generally the structure of the building is common property and the lot is limited to the airspace including inner walls within the lot.
- Body corporate – strata company, homeowners association, commonhold association etc is created to manage the day-to-day interactions of owners. Common property is vested in the juridical person. The law provides a framework for the joint management of common property.
- Automatic rights of support, access, thus addressing some of the deficiencies in the earlier approaches.
- Clear definition of the size of contribution to common maintenance costs. 'Unit entitlement' concept is used, referring to a Table forming part of the plan, clearly defining shares of common property and thus contributions to repairs maintenance. This also defines the value of the vote of the lot owner.
- Standard management by-laws – model by-laws – these provide a fairly standard form of management across all strata schemes, to regulate the day-to-day activities of owners and occupiers in the strata scheme.
- Strata Titles Referee to assist in the resolution of disputes – a conciliation process.
- The laws, once available, permit a degree of flexibility in development. At the base level, strata title allows buildings to be divided into lots for separate sale. The next step is to enable a strata plan to create residential lots in the building and part-lots outside the building for parking, storage etc.

The next step in complexity is to allow one or more lots in the strata plan to be designated for future development. These "development lots" will in the future contain another building. This is the basis of staged development.

The next step is to allow non-building lots and common property to be created. These are referred to in this report as "bare strata title" – bare or vacant lots without buildings.

The next step is more complex bare strata schemes containing mixed uses such as light industrial, commercial and residential. Examples are industrial parks, mixed use resort developments etc. If required, multiple tiers of management can be created (example, one management body to manage residential areas and another to manage commercial areas; both may be subject to a higher level homeowners' association).

### **Building strata – Building Unit Plan - Key Elements**

- A building is first constructed before the plan is registered.. Sales off the plan appear to be prohibited in Egypt.
- Location plan is used to define the land – describes the perimeter of the land parcel in relation to adjoining land and natural features such as roads, railways, rivers, the ocean etc. It can illustrate existing buildings on the land
- Floor plan – defining the lots to be created within the building. Lots are areas of cubic space defined by reference to the floors, walls and ceilings of the building already existing on the land
- Schedule of lot entitlements – this defines the relative shares of the owners of strata lots. This sets the relative contributions to common costs such as repairs and maintenance. It also sets voting rights .

Registration of a strata plan results in (i) the creation of a strata company which becomes the owner of all common property (ii) creation of individual strata lots for which separate certificates of title are issued.

A disadvantage is that a building must be constructed before the plan can be registered.

A sample plan is contained in *Appendix 6*.

#### *Definition of the strata lot*

This can be defined in the floor plan as a cubic airspace – the space contained in a three dimensional geometric figure<sup>26</sup>. Where the cubic air space is fully enclosed in a structure or building the boundaries of the lot are the inner surface of the boundary walls, the upper surface of the floor and the under surface of the ceilings. The structure outside the lot is common property and this may be vested in the strata corporation. Walls within the lot, such as rooms dividing kitchen, dining lounge room bedrooms bathrooms etc are part of the lot and are therefore owned by the lot owner. If a wall does not extend to the full height of the cubic space, such as a balcony wall, then the boundary is along the line extending from the wall to the full height of the cubic space. Where the intention is to include in the lot a wall that defines the lot, then the strata plan may be annotated that the boundary is through the centre of the wall. To reduce the complexity in defining lots and common property, the law can define conduits pipes etc that carry common services to be common property even if within a lot.

Utility lots [non-residential lots for storage, parking etc] can be created by the same means. They may have a separate lot number or may be defined as part of the major lot to which they are attached.

An area intended as a dwelling for a manager or caretaker can be part of the common property (unless management rights are intended to be a marketable commodity).

An advantage of making structural components of the building as common property is that, to some extent, it addresses the need for support without detailed easements. It removes from the lot owner the potential for making changes to the structure of the building, protecting the integrity of the building.

#### *Common property*

An essential feature of a strata plan is the access by all lot owners to facilities on the common property. The simplest method of definition of common property is to define it as the balance of the mother lot not comprised in any lot. Two approaches are available (i) the common property can vest in a strata company created upon registration of the strata plan (ii) it vests jointly in all lot owners for the time being, in shares proportional to their lot entitlements.

Several advantages flow from the common property concept (i) it permits common access to all parts of the common property without the creation of easements and without supporting legal documents (ii) it removes ownership of structural components from lot proprietors, limiting the possibility of structural changes that affect the viability of the structure (iii) it places the onus of repairs and maintenance in the corporate body of proprietors rather than in some individuals and permits the strata company to engage professional managers in appropriate cases.

#### *Management of the strata scheme – building unit owners' association*

The law may provide for the automatic incorporation of an association of home owners/strata company upon registration of the strata plan. The members of the company are the proprietors for the time being of lots in the strata scheme. Generally the body corporate must meet annually to undertake its

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<sup>26</sup> see *Strata Titles Act NSW 1973 Section 5 definitions*

responsibility of managing the activities of the development. Voting rights are determined by the lot entitlements.

The responsibilities of the strata company are to control and manage the common property<sup>27</sup>.

#### *Relation of strata plan to other laws*

Generally there is a close link between town planning law, the survey law and the registration law. The registration law is parcel-based and works effectively if the laws define a land parcel in a plan of survey rather than in a metes and bounds description in a deed. Any division of land should result in a subdivision plan approved by the local authority or planning authority, which enforces minimum parcel sizes. Generally a lot in a strata plan is considered for the purposes of these laws to be a division of land, requiring (i) planning authority (ii) definition of the lots in a plan, in this case an apartment plan or a strata plan. Titles will issue for each lot.

Another key concept is the effective creation of common property. The planning law contains in Article 16 an example of a statutory divesting of land from the developer and vesting in the State as public land. Although the law provides that the Governor's decree is the operative act to vest the land<sup>28</sup>, generally it should be that the vesting takes place upon registration of the plan of subdivision by the RO.

#### **Bare land strata**

Generally a strata plan is used where (i) one lot is superimposed on or sits above another lot (ii) a building exists, whether or not lots sit above each other, and lots are adjoining and it is intended to create common property. However, a much more extensive range of development options will be available if the law permits the use of bare strata plans. A sample bare strata plan is set out in **Appendix 6**

Other jurisdictions illustrate the likelihood that land developers, once recognizing the attraction of strata title, will attempt to use the strata plan provisions to create bare land strata developments. The process of lot definition in a strata plan is not readily transferable to a bare strata plan because in strata plans lots are defined as cubic space defined by reference to an existing building. In bare strata plans there should be flexibility to define lots and register the plan before any building is constructed.

#### *Advantages of bare strata developments*

- It is not necessary for a building to be constructed before the plan is registered. This allows but does not require the developer to create the subdivision framework, receive separate certificates of title and to sell them. To ensure similar standard of construction or to maintain a theme, construction by-laws control future building activity.
- Enables an alternative method of lot subdivision creating single building lots plus common property. Common property can be used for landscaping, access to the lots and visitor parking, shared sporting facilities such as a pool, or a clubroom, passive recreation areas etc.
- Lot definition can be by traditional survey methods.
- Flexibility for land developers, permitting greater density living by permitting the creation of shared recreational facilities on common property. Smaller lot sizes can be accommodated where access and recreation areas are shared. Common property in the form of a park or open space need not be made available for general use by the public.

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<sup>27</sup> If more active powers are required for the strata company these generally need to be stated. In *Travis v Proprietors of Strata Plan 3740* (1969) 90 WN (Part 1) NSW 711 it was considered that this general power did not extend to constructing a swimming pool on the common property. Under this power the strata company may initiate legal proceedings to protect common property– see *Proprietors Cavill Court Building Units Plan No. 48 v Smith* cited in Butt *ibid* page 556

<sup>28</sup> *the danger of such a provision is that if the approval is not kept in the land register, the land office will not know that the ownership of the land has been divested.*

- Access ways can be common property rather than public road, permitting reduced road and verge size; setbacks do not apply to buildings fronting an access way. Traditional road surfaces and street lighting may not apply so theme lighting etc can be used.

#### *Bare strata Plan*

*Location plan* – a location plan similar to that used in a strata plan (except that no building is constructed) illustrates the location of the bare strata scheme in relation to road, adjoining lots and other natural features such as rivers and ocean. This also includes a sketch of the bare strata lots in relation to the lot being developed.

*Lot plan* – survey information of lots and common property.

*Schedule of unit entitlement* – as per strata plan.

*Management statement* – or by-laws to regulate activity. This may set a theme.

Themes – destination resorts including hotel, residential, sports club, golf course, commercial components (ii) Business park that comprises commercial, light industrial and residential (iii) retirement village, with ownership restricted to those aged more than 55 years (iv) commercial centre consisting of shops, offices and residential apartments (v) eco-tourism in a rural setting/ wilderness living (vi) low-cost housing.

#### **Staged development**

The strata legislation will generally contain provision for subdivision of strata lots. This provides an element of flexibility where further development of a lot or common property is required. For example the location of a wall may be moved in such a way as to redefine the lot and common property.

Care needs to be taken if the subdivision provision is to provide the right of staged development of the lot. Stage development is generally meant to cover the phased construction of a number of buildings one after another, with the first constructed buildings to be progressively sold and occupied during the period of construction. The attractions for the developer are that holding costs are lower, as the sale of the first lots can be used to finance the construction of subsequent lots.

Staged development adds complexity, including: (i) how to define the lots that are not yet in existence (ii) how to protect the purchasers of the early lots and ensure the developer provides what is promised – future amenities that may affect the sale price of the initial lots (iii) how to define with certainty the obligations of the early purchasers to contribute to the subsequent common facilities.

One approach is to allow a staged development by permitting a strata plan or bare strata plan to include a “development lot” for future development and requiring extensive disclosure in the original strata plan or bare strata plan at the time of construction. Disclosure can be by means of a development statement, containing plans and drawings of the intended future stages. A development statement:

- describes the stages by which the strata development will be undertaken. All future buildings and common amenities can be described, together with details of access ways, landscaping etc
- describes the phases by which the strata project will be implemented. Construction zones, work days and times and access requirements should be disclosed as these may affect occupiers’ use and enjoyment of facilities. Disclosure will demonstrate forward planning and minimize the potential for disputes.
- contains a projected schedule of unit entitlement so that purchasers have a good understanding of the potential rights and obligations.
- describes landscaping to be provided by the developer.

- includes a description of future buildings, and sketches of appearance and a description of external finish.
- should warn purchasers of the risk of non-completion.
- is registered as part of the original plan.
- is deemed a contract between the developer and the strata company, so that (i) any subsequent variations require the consent of the strata company (ii) the strata company will cooperate in the future stages and will not seek to prevent authorized development .

**Conversion of strata or bare strata lots** – once a legislative framework is enacted it can cope with (i) new buildings constructed specifically to be strata titled and (ii) conversion of existing buildings to strata. This is simpler where the total building is in single ownership, as issues of consent by multiple owners are avoided and the difficulty of obtaining multiple proportionate contributions to the cost of refurbishing the building, is avoided.

Some conversions can occur where a building previously used for commercial or light industrial such as inner city areas is no longer required and land use patterns are changing towards residential.

Key issues are (i) town planning – change of land use must authorize the conversion (ii) building standards – adequacy of existing structure for residence – access fire (iii) provision/ separate metering of public utilities – water gas electricity; capacity of sewerage infrastructure. It will be apparent that conversion is not a difficulty from the perspective of registration. An apartment plan can be used for a new or old building if approved by the planning authorities. But it may require planning or building standard review that slow the approval process.

## 5. Recommendations

### *Legal Reform in stages is recommended*

There are generally two approaches to revising the legal framework.

- A detailed statute prescribing in depth the internal affairs and operations of the condominium /homeowners' association; or
- General details in the law, supported by regulations fleshing out the detail

The approach to date in Egypt has been the second, broad statutory guidance with power for ministerial decree or regulation, to set out the detail. The framework exists in statutes, though the concepts may need adjustment in the long-term.

A similar approach can be used in the short-term to begin the simplification process recommended in this report. Regulations can be drafted to (i) permit the preparation of building unit plans to define apartments and common property in the block; (ii) provide a repository for the plans (iii) require all transactions with the apartments to use the definition [lot number in the Building Unit Plan] to transact apartments; (iv) guide practitioners in setting up schemes and converting existing buildings at the time of initial registration; (v) aid apartment owners, lessees, delegates and professional managers in the day-to-day activities in a block of apartments. This is the approach recommended.

Instead of recommending major legal reform to laws at the outset, this Report proposes the preparation of regulations in consultation with industry groups. Regulatory change can be developed before the projected start of the project's pilot activities, whereas a major revision of law requires a longer time frame. The regulations and supporting explanatory material can be developed in synchronization with

the design and implementation of the pilots. If the pilot design thus includes testing the application of a Title Registry<sup>29</sup> in an urban area, the regulatory framework providing the detail required to implement the pilot in relation to existing blocks of apartments could be in place. It can be tested in a small area and revised before more extensive legal reforms are undertaken.

**Proposed Short Term Regulatory Reforms** – regulations and decrees are recommended to achieve the following prior to the commencement of the project pilots scheduled to commence April 2006:

- (i) *Provide a legal framework for preparing Building Unit Plans* – amend Chapter 3 section 2 of the Executive Regulation for Siqueal El-ainee Law 142/1964 to provide more detail on the format of the building unit plan. The existing regulation attempts to define processes but it is considered that the relevant articles should be replaced. The new articles should refer specifically to a Building Unit Plan containing (i) a location diagram that illustrates the real estate unit on which the apartment building is situated, together with details of adjoining real estate units, roads and other identifying features (ii) a floorplan that illustrates in sketch form the apartments (iii) a schedule of apartment shares, in Table form, listing the apartments and the share of ownership of common property; and (iv) management covenants/ by-laws regulating the affairs of the joint owners.
- (ii) *Apply the Building Unit Plan provisions to Deeds Registries* – the regulation in (i) above will not automatically apply to urban land as it deals mainly with Siqueal El-ainee title registration.. To permit Siqueal El-shaksi offices to use Building Unit Plans, a regulation is required under Law 114 of 1946
- (iii) *Update initial registration procedures* – amend Chapter 2 of the Executive Regulation for Siqueal El-ainee Law 142/1964 to facilitate the application of building unit plans in the initial registration process –
  - Introduce building unit plans to the field processes
  - Identify who will prepare the Building Unit Plan
  - Introduce the concept of the schedule of unit entitlements.
  - Improve initial registration – commenced in 1976 this now covers approximately 80% of agricultural land area. However, baseline data suggest title registration doesn't work effectively as it should and doesn't match ownership realities on the ground. This can be strengthened by including: <sup>30</sup>(i) Careful analysis of ownership –v- occupation and tenancy agreements; (ii) Recording mortgages, liens and leases;(iii) Eliminating validation of payment of property taxes;(iv) Eliminating review compliance for building permits;(v) Eliminating the need for ESA inspectors ;(vi) Defining each transaction for the apartment by reference to the apartment number and building unit plan number – eliminating the need for lengthy deed descriptions;
  - Assist other agencies – property tax and ESA, to use the updated reference system;
  - Remove ESA inspections and measurement from subsequent transactions, as the apartment is now sufficiently defined in the Building Unit Plan;
  - If the Register is to be converted to Siqueal El-ainee, introduce the use of simple transaction forms to replace the deeds currently in use;

<sup>29</sup> *Siqueal El-ainee under law 142 of 1964*

<sup>30</sup> *The baseline study found that "it became very clear that the official ... registers kept by REPD and ESA don't match with registers kept and maintained by other public authorities... and ... don't contain much information about the real owners", page 4; also on page 5: "the information in the titles is often not matching the situation on the ground." On page 7 it suggested that 80-90% of ownerships are in the informal system. Report on the Baseline Study conducted October 2003 to February 2004; A case study about Elmanshya El Ebrahemia and Trabamba villages in Dahmour District of Beheira Province; Egyptian Cadastral Information Management Project ECIM*



- Review the procedures in Ministerial Decree 1749 for 1975 to (i) eliminate the survey reference and replace it with updated references to the Building Unit Plan to be furnished as part of the process; (ii) expand the disclosure requirements to include details of the tenancies and mortgages; (iii) date of building construction; (iv) potential and actual liens and other charges against the apartment.
- (iv) *Update Registration Office procedures* – these are contained in regulations to Laws 114/1946 and 142/1964. The substance of these reforms will be provided in reports by other advisers. Make provision for a public repository for cadastral maps, building unit plans etc.
- Repository for building unit plans. Consumer perceptions persist that processes are still costly and complicated with overlaps in the function of the RO and ESA<sup>31</sup>
  - Eliminate deeds and replace with simple single page forms

**Legislation for longer-term reforms** – the proposed regulation/decreed changes will commence the major process of transitioning towards a parcel-based deeds register for apartments or the implementation of Siguéal El-ainée procedures in urban areas. (This is a significant policy decision for GOE outside the scope of this Report). These regulatory reforms alone will require budgetary and institutional change in the delivery of registration services. However, it is important to keep in mind the value of pursuing further revision of statutes to remove some of the current weaknesses, particularly in relation to the management of common areas in apartment buildings. This longer term reform will complete the process of enshrining condominium/ strata title concepts in the law. The changes will address the relationship between a building unit plan and the planning law, taxation law etc, so that Building Unit Plans require planning approval. They will also address inadequacies in the management provisions relating to joint property in a block of apartments, such as (i) replacing partnerships of apartment owners in the Civil Law with a Building Unit Owners Association which will be a juridical body comprising all owners for the time being of apartments in the building; (ii) vesting the common property in the Building Units Association; (iii) permit management by-laws to be made and to be recorded in the register so that all purchasers are aware of their rights and obligations; (iv) strengthen the disclosure provisions such as requiring conditions of planning approval that bind apartment owners under Article 23 of Urban Planning Law 3/1982 to be disclosed in the register. The amendments will provide the necessary legislative basis for staged development and for bare strata title.

**Appendix 2** summarizes the proposed reforms.

**Extensive consultation required** – although the Ministry of Justice will have primary responsibility for drafting the regulations, the reforms to procedures will impact on a wide range of stakeholders in both government and industry. In addition, the reforms will affect members of the community owning or living in apartments in the pilot areas. For that reason the Ministry will need to consult extensively with all stakeholders and the project could provide inputs in the drafting of discussion papers, instructional material and sample documentation.

**Resources for implementing the recommendations** – the project should apply resources to (i) merging the recommendations from this report with the recommendations of the Real Property Legal Advisor who has proposed changes to streamline registration procedures of the two registries into one single discussion paper; (ii) meeting with MoJ to gauge responsiveness to the proposals and make any consequential changes; (iii) prepare a discussion paper for circulation to facilitate industry and community consultation; (iv) draft the regulation; (v) review the design of the pilots in the light of this process.

### **Consultation process**

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<sup>31</sup> see page 6 of the Baseline Study

The enactment of strata laws will impact on a wide range of stakeholders and the process will require extensive consultation. The laws will impact on: land developers [a range of development options will be required]; the legal profession and those responsible for advising purchasers; banks and other prospective lenders against the security of a building unit title; insurers likely to provide insurance for apartment owners and Building Unit Associations; real estate brokers and selling agents involved in the marketing of strata properties; surveyors responsible for land subdivision plans etc; and architects designing new developments. A variety of government agencies will also be affected including the Ministry of Justice's Registration Offices, the Egyptian Survey Association; notary officials; and each planning agency responsible for development approval particularly in relation to medium and high density development. The Building Unit Title concept provides such flexibility in land use and development that its enactment must be supported by appropriate flexibility in town planning regulations; rating and taxing by authorities; provision of utilities such as water, gas and electricity (as parts of buildings and common property will require separate services and metering)

Consultation can be achieved by circulating a Working Paper or a specific Proposal and conducting consultative workshops to present the concepts and to receive feedback. In addition, a Consultative Committee may be established to review the proposals and to provide more structured input. Industry representatives will also have the potential to bring the new processes to the attention of members, assisting in disseminating information and in the education of practitioners

Operational guidelines and instructions, information kits and samples of documentation will be required. It will be necessary to identify an existing or new industry group or government sector resource to assist in the preparation of Building Unit Plans.

## **6. Next Steps**

### ***6.1 Research Limitations***

The adviser makes reference to the following list that may impact strata title legal reforms but due to time constraints have not been addressed:

- Civil and Commercial Procedure Law
- Complex arrangements between builders and financing agency where the developer receives finance to construct a building on land owned by another party. The law recognizes the capacity of the financier to accept a registered mortgage or lien security over registered real property of a guarantor.
- Land reform law
- Legal capacity to expropriate an apartment
- Impact of laws affecting unused/unoccupied apartments and rent control.
- Termination of apartment buildings on destruction of the building
- Impact of concept of "family ownership" in Article 851 of the Civil Code
- Valuation of Constructions

The report does not address the need for a solution to the issue of existing residential buildings on agricultural land. The town planning issues and administrative provisions to expand the boundaries of towns and villages have not been examined.

### ***6.2 Proposed Next Steps***

During the consultancy it was apparent that although the law provides a framework for registration, the day-to-day implementation of the law does not always reflect the intent of the law and results in delays and frustrations that discourage purchasers of apartments from registering. This highlights the importance of consultation with the wide range of government and industry groups likely to be affected by the implementation of Building Unit Titles. Guidance must be provided at each step of implementation. The follow on education, training and staff capacity – building processes will be significantly larger than the regulatory reform process. The following next steps are recommended to the Task Leader:

- Review of the findings and proposed reforms in this Report by project staff, particularly in the light of the issues not addressed above
- Incorporate proposed short-term reforms contained in this report with reforms from other advisers on how to streamline the operations of Sigeal El-ainee and Sigeal El-shaksi registries .
- Prepare a draft working paper containing all proposed reforms and refer it to GOE for further evaluation using a broad committee structure for review purposes.
- Based on response and review comments i) revise the design of the pilot activities as appropriate – consider the extent to which the proposals emerging from this consultation can be tested in the pilots being designed in the project; (ii) prepare a draft of the amended regulations in close collaboration with key process owner agencies preferably in a working committee format.
- At the stage of first draft of Decree/Regulations, commence industry consultation on the content and impact of the regulations. Draft a Working Paper for circulation to industry groups, seeking extensive input concerning (i) the introduction of Building Unit Plan; (ii) new processes in the Deeds Registry; (iii) new processes in the Title Registry
- Thus, in relation to the proposed short-term reforms, compile a draft of the proposed regulations and refer them to MoJ for refinement and promulgation. The regulations would be in the form of (i) amendments to 1946 Registry procedures (ii) amendment of 1964 Registry procedures (iii) regulation providing more detail on the preparation and use of Building Unit Plans (iv) amendment of initial registration regulations
- Develop education materials and a strategy for implementing the new procedures
- Conduct industry and government staff training programs

## Notes on Appendices

**Appendix 1** reflects that strata title development does not occur in a vacuum. It should fit it into the general legislative framework for (i) town planning (ii) subdivision of land and buildings (iii) requirements for the preparation of plans of subdivision and the lodgment and registration of such plans. The act of registration generally follows from the registration of the land subdivision plan or the strata plan. The Table in Appendix 1 highlights relevant legislation.

**Appendix 2** summarizes the reforms recommended in this Report

**Appendix 3** This is a sample of the complicated typical description of an apartment and common property. The Appendix suggests a simpler description.

**Appendix 4** lists the meetings, interviews and site inspections conducted by the adviser

**Appendix 5** The project translation of Article 19 on initial registration

**Appendix 6** Presents sample plans from other jurisdictions as a guide for readers and to assist understanding of general concepts. The plan formats are suggestive and modifications to suit the local context are anticipated.

## Reference Sources

Butt, Peter Land Law, 1988 Law Book Company Sydney

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*Economic Commission for Europe, Geneva, a paper developed for the United Nations New York and Geneva, see page 6, website ???*

*Report on the Baseline Study conducted October 2003 to February 2004; A case study about Elmanshya El Ebrahemia and Trabamba villages in Dahmour District of Beheira Province; Egyptian Cadastral Information Management Project ECIM*

End-User Pulsing Survey Report on Registration and Mortgage Issues April 2005; Egypt Financial Services Project, Public Awareness and Communication Team

Hawthorne & McFadzean, Community Titles Law and Practice, 1991 Land Titles Office NSW

STEVE – This should go in the front of the report. An Acknowledgements Page would also be useful

## Abbreviations used in this report

EDO	ESA District Office
ESA	Egypt Survey Authority
GoE	Government of Egypt
MoJ	Ministry of Justice
RO	Registration Office





#### Appendix 1: Relevant Laws and Regulations

The Consultant was required to prepare an independent assessment of GOE's laws and regulations pertaining to strata title. The adviser has reviewed the general land development and registration provisions highlighted in available legislation. It is important to understand the legal and institutional framework in which the buying and selling of apartments is undertaken. The planning and taxation framework and land/ document registration provisions will provide the context for land development and will affect the process of buying and selling apartments. This Table highlights some of the provisions. The site inspections and discussions with practitioners summarized in Appendix 4 were also important, to assess the extent to which the day-to-day institutional procedures impacting on apartment transactions comply with or depart from the legal framework.

The following Table is provided as a basis for further research. It is based only on unofficial English translations, which sometimes do not highlight the exactness of expression in the Egyptian law. It will be a useful starting point for future advisers needing to locate relevant provisions<sup>32</sup>. It is an aid for review rather than an exact legal interpretation or clear statement of the law. It provides general comments on the impact of the provisions and flags some potential reforms.

Law	General content	Comments	Potential reforms
Constitution	<i>Article 29</i> – three kinds of ownership: public ownership, private ownership and co-operative ownership		
	<i>Article 34</i> – land cannot be expropriated except for the public benefit and with compensation		
	<i>Article 37</i> – maximum limits of land ownership may be set in law	Land reform laws not yet available	
Law 114 of 1946	<p>[General registration of deeds provisions relevant to registration offices in Cairo]]</p> <p><b>Article 2</b> The head office of the Real Estate Registration and Notarization Department shall manage registration/ notarization offices and shall keep copies of notarized instruments and indexes</p>	<p><b>General notes</b></p> <p>1. The law sets up a form of deeds register following notarization. Sets up offices for the notarization and registration of instruments in its jurisdiction and for keeping copies of notarized instruments. An index of instruments is to be kept.</p> <p>2. This register will be contrasted with the In Rem Register [Siguel El-ainee] in the 1964 Act described below. That Act refers not to the sequential register of deeds but the issue of Certificates for each land unit [lot or land parcel]. The 1964 Act reflects the shift to a registration of title concept. That move creates difficulties for apartments described below</p> <p>3. There is no equivalent of Article 8 of Law 142 Of 1964. That Article defines the types of land that may be registered under the Act</p>	<p>See reference to the Urban Planning Law 3/1982</p> <p>[Adequate basis for a deeds registry and an effective index. Complexities in the day to day operations of ROs arise not from the Act but from evolving work practices</p>

	be submitted to the Board of the Real Estate Registration and Notarization department		
	<b>Article 8</b> A decree and executive regulations are envisaged	Simple procedure for reforming technical processes without varying the substance of the law	
	<b>Article 9</b> All documents that establish, create or affect interests in land shall be 'notarized via registration'. If the rights are not registered then the rights can't be transferred. Unregistered instruments have no effect except as between the parties. Article 10 contains similar provisions	Basic registration principle reflecting the need to register instruments affecting land  The incentive to register is that the deed, as part of a public register, will bind subsequent parties	
	<b>Article 11</b> Leases exceeding 9 years shall be registered. If they are not, they don't bind third parties. In Article 13, Inheritances shall also be registered	Leases exceeding 9 years to be registered – see Article 24 Law 49/1977 landlord and tenant – all leases to be registered. See Act 24/1997 – all contracts of tenancy [including leases less than 9 years, apparently] after 1977 shall be in writing and shall be registered.  If a third party buys without notice of the rights of the tenant because the deed was not recorded in a public register, the purchaser may ignore the tenant's rights and commence occupation. See an inconsistent provision in Article 604 of the Civil Code. See an inconsistent provision in Article 13 Law 31/1981 where purchasers may be bound.	
	<b>Article 19</b> Notarized deeds can be affected by marginal notes. For example a deed of mortgage is registered – an assignment of mortgage is not effective unless a marginal note is recorded on the 'margin of the original recording'	An effort to record other claims over or interests in the land. An aid to searchers	
	<b>Article 21</b> requires first a signed request. Article 22 sets out requirements to accompany a request [identity of parties, details of any	The general process is initiated by a request  Some reference has been made to the requirement to produce	



	Sixth: information about the origin of the right disposed of ... contracts, certificates, rulings... the method by which the title devolved	evidence from the tax office must be provided. A certificate is issued by the Tax authority but this will apparently be retained if the owner is in arrears  A policing mechanism??	
	<b>Article 23</b> purports to limit the deeds referred to in Article 22 to registered (?) deeds [exceptions for inheritance and instruments before 1924]  The following instruments with regard to the proof of the right to title ... shall be accepted	An incentive to register deeds that create or dispose of interests in land. Article 9 provides that if a right is not registered then it cannot be transferred.  Articles 22 and 23 seem to place a higher onus on the registry than their equivalents in other jurisdictions. The onus relates to the element of proof of the right, not simply reciting the basis of the right. As a result, many levels of investigation have been set up	
	<b>Article 28</b> - A log is made of instruments and copies presented for notarization		
	<b>Article 31</b> requires a book to be made recording the notarized/registered instruments in sequence of the date of submission	Standard approach in a deeds register to file deeds sequentially  The index to the register book is alphabetical and records alphabetically the names of both parties to the deed. This is an aid to subsequent searching	
	<b>Article 33</b> - If more than one instrument is lodged at the same time, priority is according to the sequence of lodgment	Standard priority provision	
	<b>Article 37</b> provides for marginal notations	Useful notice provision	
	<b>Article 43</b> – registration lapses if not renewed in 10 years??		
<b>No 68 of 1947 on Notarization; see Act 103 of 1976</b>	Updating the role of the RO “The Notarization and Land Registration Offices shall undertake the following:  1. Receiving and notarizing instruments.  2. Recording the official instruments in the books intended for such purpose.	Although this law makes no express provision for apartments, the law applies to all transactions with land and buildings. Thus deeds of sale of land and for a mortgage are processed by the Notary and Registration Office  See responsibilities imposed on the RO by other Statutes – for	

	<p>notarized instruments and sending duplicates thereof to the main Notarization and Land Registration Office.</p> <ol style="list-style-type: none"> <li>5. Indexing the notarized instruments.</li> <li>6. Issuing copies of the notarized instruments and annexes thereof.</li> <li>7. Legalization of the signatures of the concerned parties in the private instruments.</li> <li>8. Recording the dates of instruments.</li> <li>9. Annotation on books as required by laws via the Notarization and Land Registration Offices.</li> <li>10. Accepting and depositing the instruments provided for by the Executive Regulation.</li> <li>11. Issuance of certificates stipulating the ratification of signatures or certification of dates on the private instruments or annotation on the books provided for in paragraph 9."</li> </ol> <p>Although Article 8 purports to prohibit the issue of copies to third parties unless a court order is provided, the office freely issues copies</p>		
Law 25 of 1976	<p><b>Various amendments to Act 114 of 1946</b> relating to final judgments, adverse possession, court actions, supporting documents etc</p> <p>Article 2 empowers the RO to assess an application based on adverse possession rather than on documentation. A committee is to be established in the office to review applications</p>	<p>This includes a power to revise instruments. Deeds must also be annotated as valid for notarization</p> <p>A more demanding duty – includes investigation of the validity. Generates stages of investigation during the process. Perhaps this is a policy, as Egypt transitions from a deeds registry to a title registry, to improve the basis of the deeds registry before conversion. The more accurate the register, the</p>	

	<p>as valid for notarization by the competent Notarization and Registration Local Offices.</p> <p>2- Recording the instruments in the notarization books and officially annotating them as actually notarized.</p> <p>3- Copying the instruments requested to be notarized.</p> <p>4- Keeping the originals of such notarized instruments and sending duplicates thereof to the competent authorities.</p> <p>5- Indexing the notarized instruments.</p> <p>6- The marginal annotations and sending duplicates thereof to the main Notarization and Land Registration Office.</p> <p>7- Issuing the real estate certificates.</p> <p>8- Issuing duplicates of the notarized instruments and annexes thereof.</p> <p>9- Giving permission for viewing (sight viewing) of instruments.</p>		
Instruction for Law no. 114 of 1946	<i>Article 5</i> – non-registered transactions have no effect except as between the parties. In Article 8 a similar provision applies to unregistered ancillary rights		
	<i>Article 7</i> reflects a severance of common ownership by a ruling		
	<i>Article 12</i> – reference to an agricultural co-operative association	Recognition of co-operatives	
	<i>Article 13</i> – marginal notes about lawsuits		
	<i>Article 19</i> - instrument for notarization shall be submitted in quadruplicate. The instruments shall be signed in the presence of		

	and address of the parties, capacity, description of the real estate, 'data relating to tax obligations', information about the original property right and subsequent subdivisions rulings etc		Short term It is apparent that the regulation needs to be rewritten to simplify the registration of deeds affecting not only apartments but all deeds affecting land generally. The regulation should eliminate the complex interaction of the RO, EDO and central RO. Investigation steps not required in the law can be removed.
	<b>Article 22</b> applications for registration lapse after 12 months if not registered in that time	Subject to extension for another 12 months	Simpler procedures should result in the capture of a higher % of deeds into the registration system.
	<b>Article 24</b> preliminary examination to confirm jurisdiction and existence of all required supporting information	The investigation – large overhead, delays in registration	
	<b>Article 26</b> - send applications to EDO after recording in log book. This is intended as a cross-check against the mutation form, to determine if duplicate transactions have occurred  Detailed procedures - examination of documents; examination upon return from EDO	This takes the registry beyond a mere repository for registered instruments.  An important provision as the EDO has two significant records (i) the mutation form which in effect is a parcel by parcel record of transactions with the land (ii) a land parcel index based on Hod and parcel number, by which the mutation forms are indexed. These records are a valuable resource and in other jurisdictions are kept by the land registry rather than a surveying institution  The referral highlights the benefit of a parcel-based index for recording transactions with land. This will be fundamental to registries operating under the 1964 law	
	<b>Article 35</b> – where more than one transaction, examined in the order of priority determined by recording on the log		
	<b>Article 39</b> – if there is a problem with the documentation the office shall give the applicant 15 days' notice to resolve the problem or the document shall lose its priority		
Civil Code 1948	<b>Concept of land</b> - By virtue of Article 81 of the Civil Code 1948,	It appears from these provisions that there is a general principle	There is an element of risk for purchasers of an apartment that

	<p>land owner and acknowledged as his property. However the article recognizes that the landowner can give ownership of an installation to a third party. But if it can't be removed easily with no damage to the structure it belongs to the landowner. See also Article 803 – the ownership of land comprises all that is on and under the land to the extent that it is useful for enjoying the land. However, note that the ownership of the surface and subsurface may be expressly separated</p> <p>See also Article 1038 – the owner of buildings on the land of a third party may mortgage the buildings...</p>	<p>buildings, which are substantial and not capable of removal. However, it is apparent that the land and the building can be separated and conveyed to separate owners. A lawyer practicing in the field suggested this is not a common practice.</p>	<p>the buyer or the person preparing the contract to identify on the site of the building, the exact nature of the rights being purchased.</p> <p>It is recommended that a regulation be made setting up the practice of identifying the apartments and the common property. This will remove confusion and risk and will simplify apartment descriptions in deeds</p>
	<p><b><i>Ownership of House Storeys [summary]</i></b></p> <p><b><i>Article 856 –</i></b></p> <p>1. if there are multiple owners of parts of a building then they are deemed to be 'partners' in the ownership of the land and the common facilities in the building. This includes the foundations and the main walls [probably structural components and walls between apartments] entrances yards roof, passages corridors floors pipes etc unless this is otherwise prescribed.<sup>34</sup></p>	<p><b><i>General</i></b></p> <p>The term 'Partners in ownership' does not create a partnership or a juridical person under Article 52 of the Civil Code. It simply means common ownership</p> <p>Does the registration law 114/1946 adequately deal with the creation of 'common property'. Rights over the shared land and common parts of the building may be created specifically in the deed conveying the apartment.</p> <p>Two approaches are possible (i) the deed transfers the apartment and creates rights in the nature of easements over the shared areas. The drawback with this approach is that the rights of access and enjoyment of common facilities granted by the building owner to the purchaser may not be transferable from the first purchaser to subsequent purchasers.</p> <p>(ii) the second approach is that the deed purports to convey the common areas to the existing</p>	<p>This provision appears to have two aspects –</p> <p>(i) a vesting provision – does the Act clearly vest the common areas in the owners for the time being of the apartments?</p> <p>(ii) a partnership provision - the joint owners of the common facilities are deemed to be a partnership.</p> <p>The intention seems to be to cover both (i) and (ii) - to deem the owners to be partners in ownership of the land specified for common use. This may be broad enough to cover successors in title</p> <p>No amendment envisaged in the short-term.</p> <p>However, staged building developments add complexity where future common property is intended to vest in the pre-addition owners.</p>

		<p>facilities must be clearly defined as for example a one-hundredth share if there are to be 100 apartments in separate ownership.</p> <p>The Civil Code purports to address this need.</p> <p>This provision does not set up a strata company/ homeowners' association. However it does create a partnership and deems common ownership.</p> <p>Does this deal effectively with the issue of the vesting of common property [when new floors are added to a building and more common property is created, do future purchasers of the new apartments own a share of the existing common property?</p> <p>Simplifies transactions with apartments in areas under deeds registries</p>	<p>provision for a homeowners association with the term "building Association". However see the comment on Article 73 of law 49/1977, where a compulsory association breaches the Sharia Islamia</p>
	<p>2. common parts are indivisible – the entirety is owned jointly by all the common owners. The share of ownership is determined by the proportionate value of the part of the building owned by each owner [possible concept of tenancy in common]. The share of common property should not be transferred independently of the apartment .</p>	<p>The size of the share of ownership based on value has precedent in other jurisdictions and generally is considered preferable to another approach, where the developer simply allocates the share of ownership from a general assessment of equity without a valuation.</p> <p>One problem is that the value of lots may vary over time. At the time of purchase the buyer may not be capable of calculating the value of every apartment without access and without valuation skills. It may be better to more clearly and publicly specify the shares and to disclose this in the apartment plan .....</p> <p>Questions arise where an apartment for which the owner has continuing debts to the partnership of the apartment owners are for</p>	<p>One preferred option is to require the apartment share to be set at the time of registration of the plan so that the future purchasers know clearly what share of common property and what percentage of the common costs they must pay</p>

	<p>3. Walls between two apartments shall be owned by the adjoining owners jointly. This may mean joint ownership of the whole width of the wall or ownership by each to the middle of the wall. In Article 817 reference is made to a common wall, at the time of construction, between two buildings – this is considered jointly owned ‘up to the line separating them’, but this is not in the context of apartments in a building. [see Joint property Articles 825 and following<sup>35</sup>]</p>	debt.	In the short-term this approach is acceptable. In the long-term, it may be better for all walls between apartments to be common property and thus the obligation of the partnership of apartment owners. See Article 859.
	<p><b>Article 857</b></p> <p>1. Each owner can freely use and enjoy the part of the building owned by that owner provided such use does not restrict the use and enjoyment by other proprietors of their lots</p> <p>2. No changes can be made to the common property without the consent of all proprietors. However, if one proprietor pays for the change and it facilitates the use of the common property then it can proceed.</p>		
	<p><b>Article 858</b></p> <p>1. each owner shall contribute to the cost of maintaining, repairing and administering the common property. The contribution by each owner shall be apportioned according to the value of the respective apartment owned.<sup>36</sup></p> <p>2. Owners can't dispose of their share of common property in order to avoid the responsibility to contribute to maintenance</p>	<p>An essential feature of apartment laws, to provide for the maintenance of buildings</p> <p>The impact of Rent Control in Egypt appears to be that landlords are reluctant to contribute to building maintenance and so there is a substantial decline in the quality of building stock. However, this paper is more concerned with privately owned apartments and the extent to which the laws and procedures require, encourage or facilitate action by the joint owners</p>	<p>The difficulty with this provision is the reference to value. Is it intended to be the value at the time of first sale of apartments? The value at the date of the levy of a contribution by joint owners? Are buyers sufficiently informed of the size of their obligation and % share of contribution to the maintenance?</p> <p>In the short-term, the current approach may prove to be acceptable. In the long-term, an approach based on other restrictions</p>

			apartments and common areas, a schedule of apartment shares is presented in table form. If this is based on relative values, the developer can have the values determined <b>before</b> lodging the plan and can then set a table of shares in the common property owned by each buyer based on that valuation. This schedule of apartment shares is then used for determining the value of the vote and the % contribution to building maintenance costs, % share on winding up etc
	<p><b>Article 859</b></p> <ol style="list-style-type: none"> <li>1. Owners of lower walls shall repair them, to ensure that upper storeys do not collapse</li> <li>2. If this obligation is not carried out the court may intervene [order the sale or order that the repair work be undertaken].</li> </ol> <p>See Article 831</p>		In the short-term this is acceptable. In the long-term, a more preferable approach is that all structural walls AND walls between apartments can be designated as common property, so that the equivalent of the homeowner' association can regulate the repair and maintenance of all key walls
	<p><b>Article 860</b></p> <ol style="list-style-type: none"> <li>1. If the building collapses the apartment owner shall rebuild the apartment. If the owner of a lower storey unit does not do this, the court may order the sale of the lower unit unless the owner of the above apartment carries out the repair work at the cost of the lower apartment</li> <li>2. If this occurs the owner of the above apartment can prevent the owner of the lower apartment from living in the rebuilt apartment until the obligation of the lower apartment is fulfilled [including the obligation to pay for the repair]</li> </ol>	<p>Although no practical problems have been presented, it may be useful for the apartment association to have power to terminate the apartment relationship and to sell the land for redevelopment.</p> <p>Where a small part of the building falls into disrepair then this provision operates effectively.</p>	<p>The obligation of enforcing repairs and preventing occupation etc are acceptable in the short-term. In the longer term vesting ownership and maintenance of common walls in the apartment association so that it can maintain and have responsibility for enforcement provisions, should be considered.</p> <p>The destruction of the building by collapse should empower the apartment partnership to terminate the apartment partnership/ union –see Article 868</p>
	<p><b>Article 861</b></p> <p>The owner of an upper apartment shall not make structural changes</p>	Additions not threatening the structure can be made	[Staged development by increasing the height (adding storeys) is envisaged in other



		used to support a form of vertical staged development above the building.	
	<b>Floor Owners of the same Building</b>  <b>Article 862</b> 1. Where there are joint owners of different storeys or apartments then the owners can establish a union 2. The purpose of the union is to [maintain the building?] or to facilitate the purchase of parts of the building [for distribution between the remaining owners??]	<p>Note Act 49/1977, Article 73. If there are more than five landlords in a building, a union of landlords shall be set up by force of law, as prescribed in Article 862.</p>	
	<b>Article 863</b> The union may set in place rules and procedures for the orderly operation and maintenance of the building. <sup>37</sup>	<p>[This Union is voluntary. If the owners set one up, individual owners still have the option of whether or not to join. The Union if established is a juridical body as provided in Article 52(6) because Ministerial Regulation 109/1979 states that it is. if established it seems according to legal advisers that this is NOT an Association under the Laws governing Associations Act 84/2002]</p> <p>This provides the capacity to set management rules and is an important provision. Other jurisdictions make use of statutory management by-laws [management rules] and also by-laws made by the condominium association.</p> <p>Medium and high density developments bring additional pressures to land use and it is helpful to have a mechanism for setting standards and procedures for daily activities such as using the common areas, disposing of garbage, the hanging of washing, control of noise, control of parking etc</p>	<p>In the short-term this is acceptable. In the longer term, where management rules and by-laws are made, a procedure is required for a copy of these to be provided to potential purchasers because it has the potential to restrict the buyer's use and enjoyment of the apartment. It is preferable for by-laws to be cross-referenced in the title registry as they may significantly impact on the use and enjoyment of the lot.</p> <p>In the long-term, consideration should be given to a Condominium Referee or other dispute resolution mechanism. The action of neighbors may significantly impact on the value and enjoyment of the apartment</p>
	<b>Article 864</b>		

	<p>decisions directing the management of the building shall be made at a meeting of the common owners. All owners shall be invited by registered mail to attend. Decisions shall be carried by the majority of voters [one vote one proprietor or is the value of the vote determined by the value of the apartment? See Article 828, which suggests it does]</p>		
	<p><b>Article 865</b> The union may by majority vote (i) decide to obtain appropriate insurance cover (ii) undertake 'any works or installations' that would increase the value of the land</p>	% share of common property determines the share of any insurance monies received	
	<p><b>Article 866</b> 1. The union may by majority vote appoint a delegate to be empowered to enforce its decisions. Where a majority cannot be obtained the court may appoint the delegate. The delegate if appointed by all owners/ majority?? is empowered to preserve, protect and maintain the common property. See also Article 828 which refers to the power of partners of common land to appoint a director 2. the delegate is empowered to represent the owners in litigation and may take action against the owners</p>	The delegate provisions – a delegate may be appointed. The delegate apparently need not be one of the apartment owners and so the appointment of a professional manager may be envisaged	
	<p><b>Article 867</b> 1. The remuneration of the delegate shall be set in the decision appointing the delegate 2. The delegate may be dismissed by a majority decision of the union or by the court</p>		
	<p><b>Article 868</b> 1. In the event of the destruction of the building</p>	This envisages a decision not to	

	2. Where the union decides to reconstruct, the insurance shall be applied towards the reconstruction after taking into consideration prior claims on the insurance		
	<b>Article 869</b> Where the union makes a loan to one of the owners in the union, the loan shall be secured by a lien over the owner's apartment and share of common property. It shall commence from the date of effectiveness of the loan	It is not clear what rights the lien gives to the union. However the lien provisions elsewhere in the Code apply	
	<b>Other provisions</b> <b>Article 604</b> – land subject to a tenancy sold it shall not be effective against the buyer if it has no effective date before the transfer. However, the buyer can rely on the lease contract even if not bound by it	See Article 30 of Act No. 49/1977 [related to landlord and tenant]	
	<b>Article 814</b> The owners of a common wall may use it to support the roof and ceiling but shall not otherwise place any stress on the common wall. The cost of repair is borne equally by the adjoining owners	Walls between owners are owned jointly	See comments on Article 859
	<b>Article 831</b> [dealing with 'joint property' generally] - cost of managing and preserving the common property, including taxes. This seems to refer to joint ownership of the whole but in specific shares, See also Article 834 which provides for severing the joint property status		
	<b>Article 874</b> – uncultivated land without an owner is owned by the State. Such land cannot be possessed or appropriated. However <b>until 1964</b> an Egyptian who cultivates uncultivated land plants it etc shall own the	See also Article 970	

applies in relation to VMs

	Abutment, accretion and erosion – the rights of the abutting owner – see Article 918 and following. Tidal water land belongs to the State		
	<b>Article 934</b> – real estate shall not be transferred to third parties unless the laws concerning the registration of real estate are observed	General recognition of the relationship between the Civil Code and the land registration laws. It appears that, notwithstanding the legal framework in the Civil Code, the registration provisions are not overridden and continue to apply	
	<b>Article 936</b> – a ‘common owner’ has the right of pre-emption over a buyer and can replace the buyer. A neighbor where the land contains or may contain a building or where the neighbor’s land has an easement over the land has the right of pre-emption. The seller must notify the neighbor	Interesting provision that affects buying and selling land.	
	<b>Article 958</b> – acts of possession	Relevant in pilots and adjudication	
	<b>Article 968</b> – adverse possessor can obtain the title after 15 years	Relevant in pilots and adjudication	
	<b>Article 970</b> – State property cannot be obtained by adverse possession	See also Article 874. Also relevant in pilots and adjudication	
	<b>Article 1015</b> – Easement provisions	Relevant in pilots and adjudication	
	<b>Article 1031</b> – Mortgage provisions		
	<b>Article 1085</b> – Lien provisions commence. Recognition that court orders relating to debts may create a lien on real property. Article 1088 states that court orders only affect specific property owned by the debtor at the time of the ruling.		
	<b>Article 1114</b> – For a real estate mortgage to be valid against third parties the mortgage shall be inscribed. See Article 1117 re pawns, similar provision. See also Article 1148 for recording a lien,		

	<p><i>Article 1148</i> Contractors and architects have a lien on installations on real estate to the extent of the improved value resulting from the construction. To be inscribed</p>	<p>See Article 8 of Law 47/1777 concerning leasing and selling of real estate rights and landlord-tenant relations. Empty/ unused dwellings and apartments may be acted upon by the governor, who may improve the building, ready it for occupation and rent it. The cost of improvements constitutes a lien under Article 1148. Where the governor rents the building out, 20% of the rental shall be paid to the landlord.</p>	
Regulation for the Civil Code 13/1968	<p><i>Article 65</i> A civil case will not be accepted in relation to real estate property unless the writ of summons is registered</p>	Regulations not available but this reference arose in meetings	
Title Registration Law 142 of 1964	<p><i>General impressions</i> Sets out the operations of the In Rem Siguéal El-ainée Registry. Provides for two certificates: (i) the Article 58 certificate, also known as the Cadastral Form – [al sahifa al akariya] upon first registration, a duplicate copy is issued to the owner and the original is kept in the office for recording subsequent transactions with the land (ii) When the land is next dealt with after the issue of an Article 58 certificate, the owner's copy of the Article 58 certificate is presented for cancellation. the transaction is recorded on the office copy of the Article 58 certificate and a new certificate under Article 59 [shaheda] is issued to the purchaser</p> <p>Transactions with registered land are of no effect unless registered. An alphabetical index of owners is maintained. Leases exceeding 9 years may be recorded??. Debts charged against the land may be recorded. Transactions are registered in the sequence of lodgements, from suitable for</p>	<p>No specific provision for strata/ condominium title.</p> <p>An immediate difficulty is that the description of land to be registered doesn't recognize part of a building – see definition of real estate unit in Article 8. However the Minister is empowered to add other items to the definition.</p>	

	replacement certificate of title if the original has been lost. Note: the accuracy of the register is not guaranteed by the government		
	The Minister for Justice may issue a decision determining cadastral areas to which the In Rem registry laws will apply		
	<b><i>In Rem Registry laws</i></b>		
	<b><i>Article 1</i></b> – defines the In Rem register		
	<b><i>Article 4</i></b> – The Registry shall keep a record for each real estate unit. Executive regulations shall specify the way in which the registry and related documents shall be kept. [see Article 58 Certificate and also Article 59]	Suggests the move from a deeds-based register to a record kept for each lot.	
	<b><i>Article 5</i></b> – index to ownership to be maintained in alphabetical order, where each owner shall have a record of the real estate property owned	It is fundamental if a title registration system is to be established that the index be parcel-based. Whilst an owner's index to Certificates of Title is a useful searching tool, it suggests a continuation of the deeds approach and that is not helpful. [Upon inspection , although no index map is kept in the RO, files are stored in Hod/parcel sequence and are reasonably accessible]	
	<b><i>Article 8</i></b> defines real estate units that may be registered under this law under Article 4 [a record is kept for every real estate unit]. Three items are listed  2. The Minister may by decree add to the list.	This is a key provision as it provides the basic description of the 'real estate units' for which Cadastral Forms may be prepared /certificates under Article 58 issued.  Unit includes a plot of land in a single cadastral zone, mines and quarries and [the land of] public utilities. There does not seem to be any available provision that deems an apartment in a multi-owner complex to be a real estate unit	In the short-term, this article requires a simple amendment by Ministerial decree [not statute amendment] adding a fourth definition - an apartment illustrated in an apartment plan lodged in compliance with apartment plan regulations [to be issued]. The implications will be huge. The regulations should provide a simple basis for defining the unit/apartment in a plan by Ministerial decree [not Statute amendment].
	<b><i>Article 9</i></b> permits the Minister for Justice to make a ministerial decree in which a "residential area, or other" is a real estate unit.	The net effect of Articles 8 and 9 appears to be that the Minister has the decree power to specify when the Sigeal El-ainee law shall apply to urban land. That step has not been	

		<p>Section 1 dealing with agricultural land is currently being implemented. Section 2 dealing with urban lands currently has no application until the proclamation by decree.</p> <p>The regulation commences the process of describing how urban land will be described in maps. See Article 78 – parts of building lots external to buildings shall be described by dotted lines... See also Article 79. Project advisers indicate that the language of the regulation such as the use of wehda da caraya in Article 79 extends the concept of real estate unit to apartments in a block of apartments. See Regulation 113 that permits a page of the register to issue for a building unit [meaning, I am advised, the individual apartments inside the block of apartments]</p>	
	<i>Article 10</i> requires a separate record to be maintained for each real estate unit	Fundamental provision in a registration of title system. See Article 58 certificate	Regulation prescribing the format of this record. This is the key to providing in the RO and equivalent of the mutation form [removing the need for that form!]
	<i>Article 13</i> – rights of possession can't be established in the face of a notarized document	This does not expressly state notarized and registered although it may be the same in practice	
	<i>Article 15</i> – the Article 10 record shall contain the borders/ boundary information	In practice not all cadastral forms in the RO in the paper format contain a graphic	
	<i>Article 16</i> – use of landmarks		
	<i>Article 18</i> – submittal of documents to the RO for registration		
	<p><i>Article 19</i> – an unclear provision in the translation that may permit the use of consents and occupancy in the initial registration of land in an In Rem Registry where the deeds are not notarized [or don't exist?]</p> <p>More literal translation - Appendix</p>	<p>This approach uses a settlement form, validated in the field during systematic adjudication. It simplifies adjudication of land parcels where some dispute or informal contract exists. If occupation and written consents can be substituted for notarized deeds then the first registration of land is substantially simplified</p> <p>The process for public announcement is set out in the Executive Regulations Article 11</p>	Short-term – a procedure for the first registration of apartments is required. This may be set out in a regulation.
	<i>Article 20</i> – procedures for the first registration of land in the Title Register	Procedures will impact on pilot projects	
	<i>Article 21</i> – Judicial Committee	Appears to be useful in the case	

		relation to lots where the facts are clear and no dispute.	
	<b>Article 23</b> – the committee can act where change in the register is agreed to by the parties	Useful adjudication provision, permitting change of ownership etc to be accepted if there is no dispute between the parties	
	<b>Activity 24</b> – rights of appeal		
	<b>Article 26</b> – all dispositions of land/ verdicts that transfer or change the <i>original</i> real estate unit. Unregistered dispositions operate as personal commitments between the parties	May be wide enough to encompass change upon subdivision. Interesting to note the absence of reference to deeds at this point in the law. See reference in Article 27. See also Article 32	
	<b>Article 28</b> – leases exceeding 9 years are to be entered	“entered” rather than registered, varying the usual deed terminology	Inconsistent provision may need resolution in the long-term – see notes above in relation to Article 11 of Law 114 of 1946.
	<b>Article 29</b> – transactions with the subsequent or subordinate real estate rights shall also be enrolled. If not enrolled they are not binding on third parties	Valuable incentive to register subsequent transactions after first registration	
	<b>Article 30</b> – an inheritor cannot dispose of the inherited rights unless they are registered		
	<b>Article 31</b> – debts may be annotated in the register	This may refer to real estate finance – such instruments are to be recorded in the record for the real estate unit  The Cadastral Form contains a panel in which mortgages and encumbrances affecting the land parcel may be recorded	
	<b>Article 47</b> – real estate unit record to be lodged with applications. Subsequent provisions deal with general registration provisions. Priority and loss of priority etc		
	<b>Article 58</b> – The original owner shall receive a copy of the real estate cadastre called the title deed. Each joint owner receives a copy	Cadastral form	
	<b>Article 59</b> – certificates can also issue to holders of subordinate/ subsequent interests [used where spatial definition of the lot changes]		
Executive Regulation in Sigueal	<b>Article 5</b> – the forms maintained by the Sigueal El-ainee offices Form 1 – ownership register	There needs to be consistency in the certificates and no duplication.	



	For informal contracts – ourfi - Articles 16-22	deeds system. So the reference to EDO of transactions in the Sigueal El-ainee register is unnecessary.	
	<b>Preparation of Maps Section 1 Agricultural lands</b> <b>Article 23</b> – survey maps and registers of ownership are to be prepared by ESA. Cadastral maps and placement of field marks; field sketches. The cadastral map should illustrate real estate units. ESA also prepares Form 1	This could be amended to require ESA/ applicant to prepare plans to illustrate building units as well	<i>Short-term</i> Regulation to require building unit plans to define apartments - in first registration procedures, where the real estate unit contains a building in which several owners own different storeys or different apartments [using the wording of Article 856 of the Civil Code], ESA shall prepare a building unit plan  The content of the building unit plan is suggested in the report. See reference below to Article 66  Steps required: policy decision and ministerial decree to extend the Sigueal El-ainee register to urban areas; regulation setting out the method of defining apartments in a plan; procedure in the Executive Regulation for the first registration of separate apartment ownership to be reviewed and updated;; review of the adequacy of existing procedures for the registration of transactions with buildings
	<b>Article 25</b> – placement of fieldmarks. Article 27 states that land is defined by the fieldmarks		
	<b>Article 28</b> – field sketch to contain data to reference the R.E. unit to the traverse network and to calculate area		
	Various relevant provisions concerning the fieldwork		
	<b>Article 43</b> – control points		
	<b>Article 46</b> – initial preparation of the cadastral map	This mainly refers to the cadastral map [survey map or index map? If it is an index map this can be amended to state that where the real estate unit contains an apartment building with storeys or apartments in different ownership, and a building unit plan is prepared under section 3 of this regulation,	If the policy decision is to be made to extend Title Registration [Sigueal El-ainee] to urban land, a regulation is required prescribing the use of a condominium plan to define individual apartments. Transactions with apartments can use the apartment number and

		regulation anticipates that real estate building unit plans will eventually be used – see below	
	<b>Section 2 Preparation of maps – urban land</b>	Not proclaimed to commence	
	<p><b>Article 66</b> – defining real estate units in urban areas</p> <p>This contains reference to defining ‘<i>real estate building units</i>’ ‘as determined in the law’ This commences the provision for defining apartments in a building unit plan</p>	<p>This is the first reference found to the description of real estate building units. It is not clear if this is a reference to a single real estate unit on which a major building is constructed [the mother lot]; but discussions with counterparts suggest that the wording does in fact refer to a plan of a block of apartments in which individual apartments are defined. This will when it becomes operative be the basis for having a separate page of the register for each apartment [preparing a section 58 certificate]</p> <p>See also Article 113 which provides for a title page to be kept for each real estate unit or building unit [apartment]</p> <p>When the Giza Central Land Registry [Sigueal El-aine Title Registry] was inspected, it confirmed as follows for the two types of land under its administration:</p> <ul style="list-style-type: none"> <li>• Agricultural land [land outside the boundaries of towns and villages] there is no cadastral form for each individual apartment since the construction on agricultural land is illegal</li> <li>• For land under the deeds system [land within the town and village borders ...???</li> </ul>	<p><b>Short-term</b> – The first registration of buildings regulation could provide that for each real estate unit on which a building is constructed [and where the building contains parts in separate ownership as per the wording in Article 856 of the Civil Code] then a building unit plan shall be prepared, illustrating as a separate lot each separate apartment in the building</p> <p>This building unit plan should comply with the requirements to be prescribed [as per a strata plan etc]</p>
	<b>Article 67</b> – maps are to be prepared for geographic sections of the city		
	<b>Article 68</b> – the system in urban areas [requiring mapping of real estate building units will apply only in areas specified in a ministerial decree. In all other areas, the		

	any building unit in the city should be provided in addition to the map that shows the boundaries		
	<b>Article 74</b> – internal details of real estate units to be shown by dotted lines	The RO does not yet prepare a Cadastral Form for each apartment. Discussions with counterparts suggest that Articles 70-82 apply to apartments in block of apartments	
	<b>Article 78</b> – parts of buildings that lie in adjacent outlets are represented by dotted lines and the same applies to fenced vacant real estate units	To be clarified but it is possible that this envisages parts of apartment lots external to the building. If so this will permit significant flexibility in design of apartments [to cope with separate parts of apartments such as a parking space outside the building or a garage.	
	<b>Article 79</b> – Blocks are numbered in sequential order. Real estate units are numbered within each block	Advice is that Wehda da Caraya extends the meaning to apartments in a block of apartments	
	<b>Article 96</b> – for every real estate unit for which a request is submitted, a mutation form is created	The Cadastral Form is in effect a mutation form	
	<b>Article 99</b> prohibits the creation of a title document for lots below the minimum lot size	Cross reference to the planning law where minimum lot sizes are prescribed	Government policy – will the Registration Office be required to police minimum lot sizes?
	<b>Article 113</b> - <b>A TITLE PAGE IS TO BE KEPT FOR EACH REAL ESTATE UNIT OR BUILDING UNIT.</b> The format is in a form attached to the Regulation	Format requested	Key provision to be cross referenced in any regulation requiring the content of building unit plans
	<b>Article 121</b> – procedure for recording new owners in the register upon sale – delete the existing owner and write in the name of the new owner in black ink.		
	<b>Article 124</b> – subdivision of a real estate unit		Provide similarly for subdivision of a building unit [apartment]. This should be a less frequent occurrence
	<b>Article 130</b> – creation of an index for real estate units		Require reference in the index to building units [separate apartments] as per the separate title pages prescribed by Article 113
	<b>Article 132</b> – each person has the right to access to the information in the register by paying the fee	The register is a PUBLIC RECORD	

	Minister for Housing and Reconstruction		
	<b>Article 2</b> – the approval of the Committee is required before a building permit is issued		
	<b>Article 4</b> – no construction unless a building permit is obtained		
	<b>Article 7</b> – makes reference to a license or permit to permit a building to be amended by adding to its height	Envisages construction of a single building in stages Who can add storeys? Impact on rights of existing owners	
	<b>Article 12</b> – a sale or lease of a unit affected by this law shall contain all the details required under this law, including the building permit number, issuing authority, number of storeys, number of units [apartments], car parking, elevators etc.		Potential long-term amendment to simplify deed description – (i) the conditions of approval to be recorded in the register and not in the contract? Advantage is notice will be provided to all parties via the register. Disadvantage is where to store this information. It can take the form of a deed and be registered, and reference can be made on the Cadastral form for the common areas. (ii) permit an apartment to be identified simply as for example 'Apartment 7 in Building Plan 5244' and thus eliminate the detailed prose description.
	<b>12 Bis</b> No contract or lease shall be registered in the land office without this data	Obligation on the RO to enforce	<i>Long-term</i> – amend to permit first registration, to convert to Siguel El-ainee from Deeds, without investigating the existence of a building permit
	<b>Article 17 Bis-1</b> – sale of a building set up in violation of this law shall be null and void and shall not be registered	Obligation on the RO to enforce	
Regulation under 106/1976 Building Works Law	<b>Article 2</b> – definitions – contains a definition of : <i>Public road</i> – land owned by the state and allocated for traffic <i>Private road</i> – the vacant land owned privately and not by the state by which several persons have access to their buildings, at least one of which does not have public road access	Private road is an interesting concept useful in bare strata developments – this concept will be useful where multiple vacant lots and private road belonging to the owners of the	??? deem private road to be vested in the partnership/company of lot owners upon approval/registration of the plan  deem strata landowners association to be established under the joint ownership provisions of the civil code upon registration
No 49/1977	The rental and sale of buildings and places and Landlord-tenant relation places		

	<p>who has constructed a dwelling may continue to occupy the dwelling as if a tenant??</p> <p><b>Article 6</b> – where part of land is expropriated, the owner shall be treated as a tenant of the balance???</p>		
	<b>Article 7</b> – tenants can exchange occupations		
	<p><b>Article 8</b> – no person shall be permitted ‘to retain in the same town more than one house without justification’</p> <p>No dwelling shall remain empty for more than 4 months if there are willing tenants. If the vacancy seems intentional, the Governor may intervene to (i) improve the building (ii) rent the building units</p> <p>The cost of repair shall be a line under the Civil Code Article 1148</p>	Legal advice that this has been held to be unconstitutional	
	<b>Article 16</b> – where a building is extended by the addition of additional storeys, the value must be re-assessed	Staged building construction is envisaged	
	<b>Article 24</b> – all tenancy agreements to be in writing and registered	No reference to only registering leases exceeding 9 years. See Article 11 of Law 114/1946	
	<b>Article 29</b> – the tenancy will not expire with the death of the tenant but extends for the family and relatives to the third degree who were living in the dwelling a year before the death of the tenant		
	<b>Article 30</b> – As an exception from Article 604 of the Civil Code [???] a tenancy contract is valid against a new landlord even if it has no established date before the date of transfer of ownership	See Article 11 of Law 114 of 1946	
	<b>Article 32</b> – the landlord may increase the number of rental units either by adding units or increasing the height of the building, even if the tenancy contract prohibits this. Rent may decrease. A court may order the evacuation/ demolition of parts of non-residential parts that prevent the work on the building	<p>This provision permits the building owner to extend – see also reference to co-operatives</p> <p>Staged development of apartment buildings</p>	
	<b>Article 33</b> apportionment of water	Interesting because it states that if	

	<p><i>Article 37</i> – a landlord shall not let more than one furnished unit in the building owned by the landlord</p> <p>Exception where foreigners involved</p> <p>If the landlord does not own the building but owns some apartments in the building, the Landlord may let only two furnished apartments per city even if he owns more</p>	Perhaps no restriction on the number of unfurnished apartments	
	<b>Article 45</b> – specifies rents	See also Article 72 for low-priced houses	
	<b>Article 46</b> – a tenant who lives in a place 5 successive years prior to the date the law comes into force can remain in the place even if the term of the lease has expired but subject to the same tenancy conditions. The landlord can't ask the tenant to leave – some exceptions		
	<b>Article 49</b> – for non-residential buildings the landlord can advise tenants to vacate so the building can be extended. But the landlord must provide alternative accommodation or provide compensation for 5 years		
	<b>Article 73</b> – if there are more than 5 landlords in the same building a union of landlords shall be established as per Article 862 Civil Code	<p>The language indicates that it is obligatory</p> <p>But see Law 4/1996 which says it is voluntary</p>	
	<b>Article 74</b> – The Minister shall issue decree providing a model system for landlords	Not reviewed. A lawyer practicing in apartments was asked if this existed and he was not aware of any model rules by-laws or articles etc	
Law 31 of 1981	<b>The rental and sale of buildings and places and Landlord-tenant relation places - amendments</b>		
	Further provisions for rent, soft loans exoneration from taxes etc		
	<b>Article 13</b> – where a landlord transfers tenanted premises the purchaser is bound by the tenancy	See comments on Article 11 Law 114 of 1946	
	<b>Article 15</b> – co-operative housing activity	Recognition of co-operative housing in an urban context. See Article 12 , Instruction for Law 114 of 1946	

2007	improving houses etc guaranteed by a lien right on realty, mortgage or other securities acceptable to financiers		buildings is generally not inconsistent with the registration provisions. The capacity of the owner of an apartment to borrow is implicit and registration of the security in the 1946 or 1964 register is envisaged
	<b>Article 2</b> Minister of Economy and Foreign Trade		
	<b>Article 3</b> Real estate finance activity shall be by public juridical persons, real estate finance companies. Registered banks may apply for approval to do this		
	<b>Article 6</b> Real estate financing agreement for the purchase of real estate shall include a (i) a commitment to register the real estate in the name of the buyer (ii) commitment to record the lien		
	<b>Article 7</b> Security realty may be disposed of by sale etc		
	<b>Article 10</b> Request to register real estate security is submitted to the land office	Language here is in the context of a 1964 register	
	<b>Article 12</b> Failure by investor /borrower to meet payments -		
	<b>Article 14</b> Recording the agreement to remedy default in the margin of the registered mortgage	Language is more suitable to a 1946 deeds register	
	<b>Article 15</b> The annotation in the Registration Office is equivalent to registering an intention to foreclose????		
	<b>Article 16</b> Continued default – the lender may appoint a selling broker to initiate sale by auction		
	<b>Article 20</b> Auction sale. If the reserve price is not met [according to valuation process in Article 18 then the auction is held over for 30 days. If the land does not sell the lender may request the sale to be		

	possession. The order is registered under Article 23.		
	<b>Article 23</b> Registration of the court ruling. This has the effect of canceling the collateral charged against the land.		
<b>Decree 1/2001</b>	<b>Executive statutes of the Real Estate Finance Law</b>		
	<b>Article 1</b> - defines real estate finance for investment in the purchase, construction, repair or improvement of a building		
	<b>Article 2</b> – if the land the subject of the security is not registered a process is specified. The Act makes general provision for finance, limiting finance to 90% of the value of the land and 40% of the income of the investor, providing for valuation by a panel of valuation experts		
	<b>Article 4</b> - Low-cost housing – appropriation of state land by the Fund for Guarantee of Real Estate Finance Activity		
	<b>Article 13</b> specifies the role of the RO in processing an application for registration of a real estate guarantee [see Article 2 where a guarantee can be accepted if the land is not vested in the name of the investor]. The guarantor shall produce the title deed and an application to register. The RO shall not refuse registration except on the basis that the required documents are not provided	An interesting provision consistent with the concept of the registry having an administrative responsibility to register documents that are presented in registrable form, without undertaking other enquiries [such as validity of power of attorney, no arrears in taxes etc. This may prove an effective precedent for future amendments	
	<b>Article 17</b> commences the description of processes for selling the real estate security where there is default		
<b>No 143 of 1981</b>	<b>Desert Land Act</b>		
	<b>Article 1</b> – desert lands are lands owned by the state, lying outside the border of surveyed land, distance 2 km		
	<b>Article 2</b> – the management on ‘exploitation of desert lands of the state – New Urban Communities Authority		



	<i>Article 11</i> maximum ownership limits to be set – 200 fedans /individual; 300 per family; 10000 for co-operative society or partnership, 50,000 per company [at least 51% Egyptian owners]	How to record ownership of a cooperative society Not policed in the Registration Office	
	<i>Article 12</i> – any lease exceeding 50 years shall be considered ‘the like status as ownership’		
	<i>The regulations refer to land reform concepts</i>		
Urban Planning Law No. 3/1982	<i>Promulgating Decree Article 1</i> Urban Planning General Authority [Ministry of ???] responsible for programs of urban development, development of plans	Planning law generally provides the context for the use of land and in particular any conditions on subdivision approval of the authority. The approval of subdivisions requirement may place an onus on the registry to monitor this	May need change of thinking to accept apartments in urban areas of villages. If this can be decreed without legislation, then an amendment may not be required in the short-term
	<i>Article 2</i> Prohibits the construction of any building or the subdivision activity on “agricultural lands”. Includes arid land but excludes (i) land in cities [power to decree?] (ii) urban land in villages (iii) public interest projects of the government (iv) A house constructed in the village by the owner of agricultural land	There is a fundamental problem that delays effective titling of apartments in rural areas. ROs in such areas are converting to Siqueal El-ainee. Because buildings are seen as illegal, apartment buildings with separate apartments in separate ownership are considered illegal. Thus the Siqueal El-ainee system does not have an effective basis for dealing with apartments.  Although the concept of illegal buildings is mentioned in ROs, no reference was made during visits to land subdivisions being illegal. If a land parcel is divided from one into two lots, this is not a division requiring approval	
	<i>Planning Law Article 7</i> Town planning for village shall include the uses of land, occupancy of buildings, building heights, minimum land parcel sizes, plot ratios [% of parcel that may be covered b a building], streets, density, etc		
	<i>Article 11</i> This article defines divisions of land as divisions into more than 2 parcels or the construction of more	Significant impact – [comments are subject to subsequently locating additional provisions] (i) a deed severing a single parcel of land	This definition may not be broad enough to incorporate the concept of a lot in a building as illustrated in an apartment plan.

		Article 7; (ii) if more than one building is constructed this constitutes a subdivision and may require planning approval. This impacts on potential staged development of apartment schemes [not that they are recognized as legal].	buildings can be contained in the same apartment complex, permitting owners in the first building to access common property in later stages of the development.
	<b>Article 12</b> All divisions of land must be approved under this law. Article 13 sets out the factors to be considered before approving. 60% plot ratio		
	<b>Article 14</b> Drawings must be submitted for approval	At some stage the law must provide (i) for a form of subdivision plan (ii) signature of the plan by the authority (iii) lodgment of the plan with the registering authority (iii) lots in the approved plan are real estate units etc for the purposes of the registration laws	If this does not exist, it is a requirement in the long-term for systematic development of the In Rem Registry and also the 1946 registry  The next requirement is to combine the concept of an apartment as a division of land into the planning law
	<b>Article 16</b> – land in the drawings etc shown as public land is deemed to be public land when the governor issues a decree of approval	Dedication of public land – statutory vesting	In the long-term amendments envisaged for strata title there will be a similar statutory vesting of areas shown as common property. This could vest by statute in the apartment's partnership/ strata company/ homeowners association. The concept in this provision is a precedent.
	<b>Article 18</b> Urban extension, development of villages	Land development in stages, from the perspective of the planning authority not the registration authority	
	<b>Article 19</b> Expropriation of lands for projects	Public benefit	
	<b>Article 22</b> It is prohibited to deal with one of the plots in a new division unless an authenticated copy of the decree is deposited in the Real Estate Registration Office	No sale of newly created lot until registered.  Interesting that the decree [rather than a plan of subdivision] is required to be lodged for registration. Prohibits sales "off the plan"	Long-term – it is not the decree that should be registered but an approved subdivision plan reflecting the new plots in the subdivision. The law could prohibit the registration of any deed or conveyance of land that divides land unless the land is described as a lot in a duly registered plan. This will force the subdivider to go through the town planning process and will in the

	<p>Obligations in the approval, (ii) state that the conditions bind future purchasers</p> <p>Refer to Article 59 of the Decree of the Minister under this law</p>	<p>Certificate of title may issue. In any contract with the land, the land is sufficiently described if it is shown as Lot X in Registered Plan Y.</p> <p>Conditions/covenants that restrict the use of land should as a general statement be recorded in the title register or be cross-referenced in the registered plan of subdivision.</p>	<p>The Authority can create covenants in any subdivision plan. These can be set out in an instrument attached to the plan of subdivision. Upon registration the covenants are binding on the owners and all successors in title</p>
	<p><b>Article 25</b> The developer of a building must comply with these provisions</p>		
	<p><b>Article 42</b> The expropriation of land for planning purposes</p>		
No 600 of 1982	<p><b><i>Decree of the Minister of Urbanization and State for Housing and Land Reclamation Promulgating the Executive Statutes of the Urban Planning Law 3/1982</i></b></p>	<p>This requires the preparation of plans for the subdivision of land</p>	<p>A similar decree specifying the preparation of a strata/ apartment plan would be useful</p> <p>Long-term – planning and registration laws should provide that this division plan for land and the apartment plans for parts of a building must be registered by ... and will be a public record. Upon registration the lots and apartments specified in the plan shall be real estate units etc for the purposes of issuing a certificate of title under the registration law</p>
	<p><b>Article 33</b> A survey map of a scale not less than 1:5000 detailing the site of the land, illustrating the land and the streets etc shall accompany the application for approval of the subdivision</p> <p>Also seven copies at a scale of 1:1000 detailing the division of the land, including map scale, North, owner, "lengths and limits of the division land", area, dimensions lot numbers etc.</p> <p>Article 37 specifies the final division documentation and refers to a plan of streets, land to be dedicated for public use, blocks and plots and their numbers, dimensions etc.</p>	<p>To complete the loop of information, this survey plan should be the instrument lodged for registration. The lots contained in the registered plan should be real estate units for which title certificates can issue</p> <p>A similar process for a strata plan, except that a floorplan may be used to define the strata lots rather than a survey plan, may be established</p>	<p>This Decree may require amendment to (i) provide that in the case of apartments in buildings, a building unit plan may be lodged (ii) the survey requirements in this Article do not apply to a building unit plan</p>

	unless it is connected to a public road		
	<p><b>Article 59</b> Development application may contain the conditions to be accepted by buyers to simplify/facilitate the development process and conditions to make it a suitable residential environment [for providing for the welfare and benefit of inhabitants and for avoiding disturbance and troubles for residents]</p> <p>This may extend to the use of buildings; control of construction, architectural control, minimum cost of buildings to be constructed, building lines, prohibited constructions, noise control, animal control, disposal of waste and rubbish</p>	May refer to purchasers agreeing to permit present and future construction activities	
	<b>Article 80</b> – Plot of land for the purpose of this decree means a part of a block or any area of land prepared as a unit with disposable ownership or for urban development works thereon		
47/1978	<b>The State Civil Servants System</b>		
	<b>Article 78</b> – ‘the worker shall not bear civil responsibility except for his personal fault’	This may be the basis for avoiding personal liability for acts carried out in good faith ???	
Act 84/2002	<b>Law on non-government associations</b>	Ministry of Social Affairs	
	Article 1 promulgating law applies the act to associations and non-government institutions		
	<p><b>Article 1</b> of the law – refers to natural and juridical persons numbering 10 or more forming an association. The following articles deal with articles of incorporation. The law provides exemptions from registration fees stamp duty etc. It permits the creation of a board of directors. The association can own real property [Article 15]. Provision exists for the winding up of the association</p>	This does not apply to the voluntary union of apartment owners under Article 862	<p>For future consideration - If the partnership concept of the Civil Code applying to buildings with parts such as apartments in separate ownership, this provides an alternative approach.</p> <p>If this approach is adopted, upon registration of the ‘strata plan’ creating separate units in a building and sale of a minimum number of the units (i) there shall be an association deemed to be incorporated under this association (ii) the common property areas illustrated in the</p>

	<p>this sets out the basis of valuing various interests in land for a variety of purposes including agrarian tax, taxes on buildings, vacant land tax, disposition of buildings</p>		
	<p><b>Article 25 inserted into the main act by Article 1 of this amending act</b> - the state has a franchise right [?? Statutory lien??] over the real estate for securing the payment of the tax no matter who is the owner of the land</p>	It appears that the tax is a statutory lien that binds purchasers without notice. This makes it important for the purchaser to research tax liability before accepting the land	
	<p><b>Article 7 of this amending act amends Article 3 bis (40) of Act 107 of 1976</b>, proving that the issue of building permits for vacant land shall be prohibited unless proof of the payment of assessed taxes is provided</p>	Key provision	
Ministerial Decree 109/1979	<p>Relating to unions under Article 856 of the Civil Code etc</p> <p>[Not read – verbal description only]</p>	<p>The union under the 862 is a juridical person comprising the owners of common parts. Such owners may set up the union – it is not compulsory</p> <p>Conditions of forming a union, documents the union should keep, application form to join the union,</p> <p>Duties of person on the ground floor – maintain the pillars supporting the building. Duties of person owning the top floor – not to extend upwards if it places more stress on the pillars so as to threaten the building</p> <p>The formation of a union under 49/1977 is no longer compulsory but voluntary</p>	
Proposed Apartment Building Inhabitants Union	<p>Proposed to replace the Ministerial Decree 109/1979 to provide a management framework of the</p>	May have opportunity to have input into the drafting and provide guidance	

- State property cannot be appropriated by possession – Article 88 Civil Code
- Article 812 – easement of necessity for access to a 'public road'
- Article 813 – right to extend 'common wall' at own cost but protect adjoining owner
- Article 825 deemed ownership of joint property in equal shares unless otherwise provided;
- Article 826 – each common partner of joint property shall fully own his share and have the right to dispose of it
- Article 822 – contract or Will can't ban the disposal of property

- Article 1031 – mortgage provisions – mortgage not effective against third party unless recorded; foreclosure, precedence, surrendering priority, exercise of power of sale of mortgagee

**Appendix 2 - Draft provisions that can be incorporated in a new law and Ministerial Decree**  
**SHORT TERM**

The amendments should address the following:

**1. Procedure for the preparation of a building unit plan, applicable in both Siqueal El-ainee and Siqueal El-shaksi registries**

- How to prepare the plan and schedule of apartment entitlements
  - (i) Location plan – see sample and notes in Appendix 6
  - (ii) Floor plan– the floorplan will be a sketch and not a survey. It will not be necessary to measure the dimensions of the apartment except to establish an approximate area. It will not be necessary to show internal walls – simply to illustrate the external boundaries of walls. The apartment is defined as the cubic space located within the building. Whilst the floorplan sketches the location of the apartment in relation to adjoining apartments, it is the physical structure of the building that physically defines the apartment - see sample and notes in Appendix 6
  - (iii) Schedule of unit entitlements – set the shares of common property owned by all apartment proprietors – see sample and notes in Appendix 6
  - (iv) Management rules and by-laws that will restrict the owner's use of the lot and common property – see sample and notes in Appendix 6
- Supporting information – guidelines to practitioners in how to prepare building unit plans
- By whom signed – the Building Unit Plan
- Relations to planning authority – cross reference to planning approval laws
- Approval requirements – municipal or governorate approval?
- Merged ownership of land and building – before a Building Unit Plan can be registered, the ownership of the land and the ownership of the building must be merged in one person (to the extent to which this can be achieved in the short term by Ministerial Decree).

**2. Conversion of existing schemes - First Registration under the Executive regulations to Siqueal El-ainee**

Provisions for agricultural land are in operation. Articles for urban land are not yet operational but make reference to defining building units. These need to be revisited to (i) simplify the first registration procedures for the registration of buildings (ii) to make sure they are consistent with the Building Unit Plan concept outlines above

- Deficiency of the first registration system is that it fails to capture the latest land ownership information and doesn't "correlate with realities on the ground" – see baseline study page 5; revise the first registration procedures generally to make procedure more effective;

- Need to get access to the real owners of apartments – provide for access to lease agreements. There is a risk that long-term tenants may be registered as owners in the first registration process. The peculiarities of the landlord and tenant laws must be taken into account.
- Require the preparation of the Building Unit Plan by adjudication staff of the Registration Office, ESA, or private sector [possibly surveyor or draftsman; since the floor plan is a sketch rather than a survey it is not necessary to use a surveyor]. Significant resources required.
- How to prepare the cadastral form for the building units and what graphic should appear – RO guidelines; how to record by-laws, restrictions on use and enjoyment of lots, development controls imposed under the Planning Law.
- Remove requirements for policing building license and tax, particularly at first registration

Drafting information material publicity posters leaflets to increase public awareness - Baseline study page 18 highlighted shortcomings in the awareness of villagers of the process. The work is done too quickly and with inadequate planning. Revise the announcement and publicity process, advertising; alert staff of the unhelpful tendency to revert to the easy practice of simply recording ownership as per the deeds<sup>38</sup>

- Identify ways to reduce costs

**3. Simplify procedures in the Deeds Registry and Title Registry** – insert recommendations from other advisers – transactions with apartments should only be registered if the deed defines the apartment by reference to the apartment number and Building Unit Plan Number. Transactions should not be referred to ESA for measuring. The seller should warrant that the whole of the apartment is being sold without modification. Introduce the use of simple transaction forms to replace deeds. Permit the Deeds Registry to be parcel-based. Require the RO or ESA to be a repository of Cadastral Maps, Building Unit Plans etc

#### LONG-TERM

In the longer-term, it is recommended that a single comprehensive law for Building Unit Title be prepared, to address the complexities of modern development. This will require extensive industry and public consultation and an education program. Legislative amendment to achieve the following

- **General amendments to support the use of the Building Units Plan** - to ensure it fits with legislation of other ministries. This includes amending the Urban Planning Law 3/1982 to ensure the Building Unit Plan fits within the concept of division approval found in that law. In other jurisdictions such a plan would be considered as a division of land that would require planning approval under the equivalent of the Planning Law. Generally a Building Unit Plan, since it is to define apartments by use of a floorplan, cannot be lodged for registration until the building is constructed. This requirement would not interfere with the market's efforts to sell apartments off the draft plan preceding its registration. As a general rule, deeds conveying new apartments should not be registered until the Building Unit Plan creating the lots is registered.
- **Meetings and Voting procedures** – in the existing Civil Code provisions meetings are conducted where a Union is established. Consider if the meeting provisions should apply to all apartments

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<sup>38</sup> "few of the respondents interviewed were found familiar with or keen about registering their property to protect it against future disputes. ... most respondents don't find added value in registration. The registration process seems to display a heavy burden among homeowners..." page 7- See End User Pulsing Survey report on Registration and Mortgage April 2005 Prepared by Public Awareness and Communications Team



regardless of whether a union has been established and the niceties of unions have been complied with. Clarify meeting provisions to clarify if the value of the vote of each proprietor (one apartment one vote; or value of vote determined by the size of the share if common property); clarify quorum provisions; clarify whether the reference to decisions by the majority of those attending the meeting, the majority of apartment owners, or votes exceeding 50% of the shares in common property.

- ***Dispute procedures*** – establish a conciliation process
- ***Juridical body the Building Units Association to be established*** – this envisages amending the Civil Code to provide for the statutory creation of a Building Unit Owners Association or the Union referred to in Article 862
- ***Vest common property*** – if a compulsory Association is created then the present provision in Article 856 of the Civil Code requires amendment to vest the common property in the Association. The time of vesting is upon registration of the Building Unit Plan by the Registration Office. The amendment should revise the existing provision in the Civil Code that makes the wall between two apartments the common property of the two owners and makes it part of the common property, for consistency of management and maintenance
- ***Repository for maps and plans*** – the law could contain the compulsory requirement to establish a repository of plans, maps, cadastral maps, index maps and new divisions of land that subdivide an existing real estate unit .
- ***Management by-laws*** – permit the developer to make by-laws as part of the process of registering the Building Unit Plan. Permit the Union or Association to amend or add to the by-laws after its creation. The by-laws will be the constitution of the apartment owners association or requirements that affect the day-to-day management and maintenance of the common property. This provision will bring together into one law the various provisions impacting on the management of apartment buildings.
- ***Remove confusion about the size of the apartment owner's share of common property*** – There is already a general provision in the Civil Code concerning the size of the share but it lacks clarity and a definite procedure. It is possible that this provision could be in the initial regulation referred to above, as it fleshes out the requirements in the Code. However, if the Code is to be amended for other reasons then this provision could be revised. Require the building unit plan to contain a schedule of apartment shares, based on the developer' estimate of the value of the shares at the time of lodgment of the plan for registration. This share will be used to determine (i) the size of the apartment owner's share of common property (ii) the % contribution to the maintenance costs (iii) the value of the vote (iv) the size if the owner's share of the land should the apartment scheme be terminated upon destruction of the building (v) the share of any insurance moneys paid upon destruction of the building etc
- ***Staged development*** – the plans, the approvals and consents required; vesting of the common property lot in a building and owner's association; this amendment is not considered a priority at this stage. Amend the planning law to provide that where the Building Unit Plan contains a development lot intended to be developed in a subsequent stage, the construction of the second building is not a division of land within the meaning of that law. This will permit the second building to remain as part of the original apartment development rather than severing the second building from the first development and creating a separate apartment complex. Clarify planning consents; clarify impact on shares of common property. Note that while the share of common property of the original owners will be diluted , the obligation to maintain common property will expand (as floors are added above). There is potential for disputes.

- *“Bare strata”* – permit the development of vacant lots and common property for low-density communities. The lots and common property will be defined by survey. Upon registration of the plan, the common property will vest in the owners of the lots in shares specified in the bare strata plan.
- Conversion of existing developments to “bare strata title”
- Sporadic conversion of buildings
- Merger of land and building in one owner before registration of the Building Unit Plan – to avoid confusion, require merger of these interests.
- Enforcement of payments of maintenance costs – the partnership, union or building unit owners’ association should have power to register a lien against an apartment whose owner has not paid maintenance contributions. The provision could require purchasers to ensure this is paid before buying even an unregistered apartment, so that the buyer becomes liable for all previous unpaid maintenance.

### ***Appendix 3 – Sample of description of apartment in a deed***

#### **1. The current description of an apartment in a deed of sale**

This is a request dated October 16, 2003 to sell Apartment 7 on the first floor, above the ground floor and basement, of the real estate number 8 in the street of [ ] in the district of [ ] of the governorate of Cairo. The total area of the apartment is ..... square meters. The apartment exists in the ESA plan 5365/1997 cadastral number 197 1/500 cm scale in attachment 1 [but not attached]

The borders of the apartment

On the north side – pieces A and B as a part of apartment number 8 overlooking the [ ] street length from the west to the east 4.35 meters then head to the north 25 cm then you turn to the east 6.40 meters then you turn north 90 cm then you turn east 4.0 meters

The east line is straight, overlooking [ ] street with a length of 8.95 meters

The south line is part of [ ] street with a length of 15.75 m

On the west side is apartment 6 and part of A with a length from the south to the north 3.9m, then you turn to the east 1m then you turn to the north 3.9m

#### ***Description of apartment***

The apartment consists of three rooms a hall a bathroom kitchen and balcony and this is according to investigation visit dated 11/1/2004.

#### ***The common parts***

The apartment the subject of this request has common rights on the following part of the building:

***Firstly*** common rights starting from the ground floor entrance and all the services in the entrance illustrated in 4883/1994 attachment 27

Borders of the ground floor [some text missing....]

1) Part ELEF – on the north side is the street of [ ] with a length 3.35m and the south line is the remainder of the same property with a length of 4.1m. On the East in the ground floor remainder of the same property and part of B, length 6.9m then you turn east 1m 70 cm, then you turn south 2m 55 cm, then you turn west 1m 55 cm then you turn south 3m 90 cm

The west line on the ground floor – the remainder of the property part of C length 3m 90 cm then you turn to the west 1m 60 cm then you turn to the north 2m then in the same direction a little bit to the side 50 cm; then you turn to the east 1m 95 cm then you turn to the north 6m 90 cm

2) Part Beh – is the airshaft of the building and the service stairs of an area of 21.78 square meters and the borders are:

North line – remainder of property length 2m 80 cm then you turn south in a curve towards the east 1m, then you turn east 3m 25 cm,

South line – remainder of the property length 3m 25 cm, then you turn north with a curve to the west 1m then you turn west 2m 80 cm

East line – remainder of property with length 2m 30 cm

West line – Part A with a length of 2m 55 cm

3) Part Gim – is a shaft and a service stair with an area of 22.73 square m with the borders as follows –

North side – remainder of the property with a length 3 m then you turn south 50 cm then you turn east 3m then you turn north 1m 30 cm then you turn east 1m 30 cm  
 East line – Remainder of the property and Part of A with a length 1.3 m then you curve 50 cm then to the south 2m  
 South line – Remainder of the property 4m 05 cm then you turn to the south 50 cm then turn to the west 3m  
 West side – Property number 10 [ ] street with a length 3m 50 cm

4) Part A is an airshaft 26.8 square m with the borders –  
 North side – remainder of the property with a length 26m 80 cm  
 East – [ ] street length 1m  
 South – property number 2 [ ] street with the length 26m 80 cm  
 West –property number 57 ELEF [ ] street length 1m

**Secondly** Common property starting from the first floor above the ground floor plan number 4709/1996 attachment 22 and borders as follows –

North – the remainder of the property length 3m then you go south 50 cm then you turn east 1m 45 cm then you turn north with a curve to the east 1m 10 cm then you turn north 1m 30 cm then you turn east 1m30 cm  
 East – remainder of the property and some of Part ELEF with length 1m 30 cm then you curve 50 cm then you go south 2m  
 South – remainder of the property 4m 05 cm then you go south 50 cm then you go west 3m  
 West – property number 10 [ ] street with a length 3m 50 cm

[description continues for several pages]

All the information mentioned in this request for registration # [ ] is identical to the information in the previous request to register the same apartment and there is no contradiction.

The registration department is not responsible for any wrong data included in this contract and the parties are responsible for ensuring that all the information about borders, measurements are accurate

## 2. The proposed description of an apartment, using a Building Unit Plan

The apartment number 52 shown as lot 52 in Building Unit Plan 15- 144 together with a one-fifteenth share of the common property designated in the plan

#### Appendix 4 - Meetings and site inspections

Date	Activity	Content of activity
<i>Thursday 7 April 2005</i>	Depart Perth Travel to Singapore Cairo	
<i>Friday 8 April 2005</i>	Travel Arrive Cairo 9:00 a.m. meet Noel Taylor, Cadastral Adviser Meet Richard Gaynor, Legal Adviser	Review of legal framework in Egypt. Obtain copies of legislation. Commence review of laws and the preparation of a summary of relevant provisions
	PM – Review of legislation	
<i>Saturday 9 April 2005</i>	Cairo Continue Review of legislation Richard Gaynor – provide flowcharts for work processes, forms and records used in the land office and available legislation	
<i>Sunday 10 April 2005</i>	Chemonics Project Office 830 am	Meet team Leader and participate in Team Meeting; introduction to project staff and officers
	9:00 am Egypt Survey Authority – visit Egypt Survey Authority District Office Maadi, meet office manager and office lawyer	Detailed review of role in processing land transactions for land parcels and apartments – review of maps and records including Mutation Forms
	1330 Northern Cairo Central Registration Office – Richard Gaynor, Samer Lotfy	Full tour to review detailed operations of the RO
<i>Monday 11 April 2005</i>	830 am	Continuing orientation into the legal framework for the development, buying and selling of real estate in Egypt
	9:00 am Team Leader Dougal Menelaws, Richard Gaynor, Legal Adviser	Structure and interaction of legal inputs, structure of reports
	9:30 a.m. – Meeting Gamiel Mohamed Ibrahim, Lawyer and Shamsnoor Abdoul Aziz, lawyer	Continue meeting
	1200 Ian Corker, Team Leader, Egypt Survey Authority, multi-purpose Cadastre Project	Lessons from that project, exchange research results
	1:30 p.m. Faris Sayegh, Adviser	Structure of adviser inputs and impact on design of pilot activity
	2:00 p.m.	
<i>Tuesday 12 April 2005</i>	Meeting Gamiel Mohamed Ibrahim, Lawyer and Shamsnoor Abdoul Aziz, lawyer,	Hierarchy of laws, hierarchy of land offices, practical problems in buying and selling real estate, roles of ESA and RO
	??? am Team Leader Dougal Menelaws,	Title registration, state land, strata title law
	Meeting Gamiel Mohamed Ibrahim, Lawyer,	Subdivision of land, sample deeds and content, desert land, relationship to planning law, apartment processes in the 1946 and 1964 registries, problems in development, land records and how to change ownership
<i>Wednesday 13 April 2005</i>	9:00 a.m. – Meeting Gamiel Mohamed Ibrahim, Lawyer and Shamsnoor Abdoul Aziz, lawyer,	General discussion of description of apartments in transactions
	12 noon – Mamdouh Ragheb Zaher, Counselor, Chief Justice of Appeal, General Legislation Department; Omar Ishmael, Assistant to the Head of Registration Department for Title System; Department of Legislation, Ministry of Finance;	Meet MoJ Counterparts with Team Leader, Lawyer and advisers – general discussion providing an overview of progress in the legal research, commence detailed discussions of work flows in the registration offices and arrange inspection of an In Rem Registry
	3:30 pm Dougal Menelaws, Team Leader, Richard Gaynor, Legal Adviser, Gamiel Mohamed Ibrahim, Lawyer and Shamsnoor Abdoul Aziz, lawyer, Tamer S. Gaafer, Lawyer; Sayed M. Abas, Legal counselor; Egyptian Housing Finance Company	General discussion of financing the construction, purchase and improvement of real estate; methods of security and capacity/ willingness to undertake registration
<i>Thursday 14 April 2005</i>	Office – review of laws and structure of report	
	9:00 a.m. Dougal Menelaws Team Leader; Richard Gaynor, legal adviser	Structure of reports, Arrange site visit to Giza, statistics on land registration/ baseline data
	9:30 a.m. – Telephone conference with Lawyer Ahmed Hafez [0101 706163], lawyer employed by Coldwell Banker, Real Estate Brokers and Property Managers active in apartments	Complexities of transactions, methods of avoiding expense of transacting, impact of taxes, length of time to register a transaction

Date	Activity	Content of activity
	10:00 a.m. Meeting Gamiel Mohamed Ibrahim, Lawyer and Shamsnoor Abdoul Aziz, lawyer	Review of development process for state land, apartment developments and approval processes, mortgage finance, 1992 laws
	Office	Tabulate legislation, impact on apartments, ongoing discussions about land development for apartments, landlord and tenant provisions impacting on the lease of apartments
<i>Friday 15 April 2005</i>	Review of legislation and compilation of report	Desert Land Act and regulations, Constitution, Landlord and Tenant, registration regulations
<i>Saturday 16 April 2005</i>	10:00 a.m. - Giza Central Registration Office, Mr. Omar Ishmael, Assistant to the Head of Registration Department for Title System; Department of Legislation, Ministry of Finance; Head of Land Office; Head of Registration. The Team Leader, Legal Adviser Richard Gaynor and supporting national staff also participated.	Review of the registration process in a central office where Siguel El-ainee procedures are followed. In particular, the indexing of forms, the format of the section 58 certificate, the endorsement of changes in ownership etc were examined
	1:30 p.m. - ..... Registration office, Head of Land Office	Discussion of the first registration of land and procedures associated with the use of Settlement Forms in fieldwork were examined
<i>Sunday 17 April 2005</i>	9-11:00 a.m. – Review of relevant legislation and annotation of Acts	Outline of relevant sections in draft report. Tabulate findings
	11:00 – 12 noon Meeting Gamiel Mohamed Ibrahim, Lawyer and Shamsnoor Abdoul Aziz, lawyer	Various questions concerning the use of terminology of real estate building units in regulations
	PM – Office – review laws	
	6 pm Ahmed Hafez lawyer	Discussion concerning the buying and selling of apartments, tenancy issues and the management of apartment blocks generally. Difficulties particularly disputes over contributions to maintenance
<i>Monday 18 April 2005</i>	Compilation of report	
<i>Tuesday 19 April 2005</i>	Office – review laws and draft report	
	Telephone discussion with apartment owner Mustapha Shedi - 0122225350	general impact on the owner of the purchase procedures [1.5 years to register the deed; 4 years to register his agricultural land], management of the apartment building and gathering contributions for the maintenance of the building [no reference to model rules or by-laws and is Union has not made any rules – regulated via the lease and hands-on management]; procedure for leasing the apartments
<i>Wednesday 20 April 2005</i>	8.30-9.30 Exit interview and departure for airport – Dougal Menelaws, Task Leader	Content of report. The need to cover (i) gated communities (ii) strata schemes with part lots external to the building
	1100 Cairo Airport Depart Cairo	
<i>Thursday 21 April 2005</i>	A.m. Travel 3:00 p.m. Arrive Perth	
<i>Sunday 24 April 2005</i>	Final version of report provided	

## ***Appendix 5 – informal translation of Article 19 of Law 142 of 1964***

Article 19 - In the case of unregistered land exchanges of real estate properties, owned by unregistered contracts, unformalised adverse possession or actual occupation not established by deeds, and in all other cases where the real estate possession or occupation is not proven in registered documents, it is possible for the parties concerned to have a contract or to agree, together with all those who have common rights or sub-real estate rights on the property within 2 months of the date mentioned in the previous article they can prove their rights in forms which will be considered equal to registered documents and those forms shall be submitted to the organization in charge of preparing the Siguel El-Ainee to revise it in order to officially approve their ownership for the properties in the register accordingly

[from a meeting on 14 April 2005 with Shamsnoor Abdoul Aziz]

## **Notes on Appendix 6**

**6.1 Strata location diagram:** The first page of the strata plan illustrates (i) the “real estate unit” on which the strata building sits. It shows adjoining information (ii) parts of common property external to the building to be used for parking. In other strata plans where adequate parking sites are available, these may be created as a part of a lot attached to the apartment

**6.2 Sample floor plan:** The second part of the strata plan illustrates the apartments 11-20 contained in the first floor. Similar sheets will contain the other floors and apartments. It designates balconies as common property for the external use. A better approach is to designate the balcony area as part of the lot, to remove issues concerning the responsibility for maintaining the balcony. It is important to note the simplicity of the floorplan. No dimensions are used, as the walls, floors and ceilings define the exact location of the apartment!!

**6.3 Schedule of share of common property:** The third part of the strata plan lists all apartments and the share of common property. This determines the share clearly, to avoid disputes. The share determines the % contribution to maintenance costs of common property, the value of the vote of the owner and the share of ownership of the land under the building/share of the insurance payout, both relevant if the scheme is terminated.

The Table is attached to the strata plan and is available to all prospective purchasers. As a tool for searchers, the Table states the Certificate of Title number (the equivalent of the Cadastral Form) for each apartment.

**6.4 Certificate of Title for an apartment:** this is the equivalent of the Cadastral Form. One copy of the Certificate of Title is given to the owner and the other is kept in the Registration Office. It is used to track all future changes in ownership and encumbrance.

**6.5 Sample location diagram for bare strata plan:** this is used to create vacant lots and common property. This is useful in low-density developments containing individual dwellings, plus, in common property, shared resources such as swimming pool, tennis courts, clubhouse and passive recreation / play areas etc. Gated communities and resort developments use this.

*6.6 Sheet 2 of Bare Strata Plan, defining individual lots:* This sets out the dimensions etc of the lots defined by ground survey



### 6.1 Sample strata location diagram

Ca. 1

64942/3/77-2M-M8/893

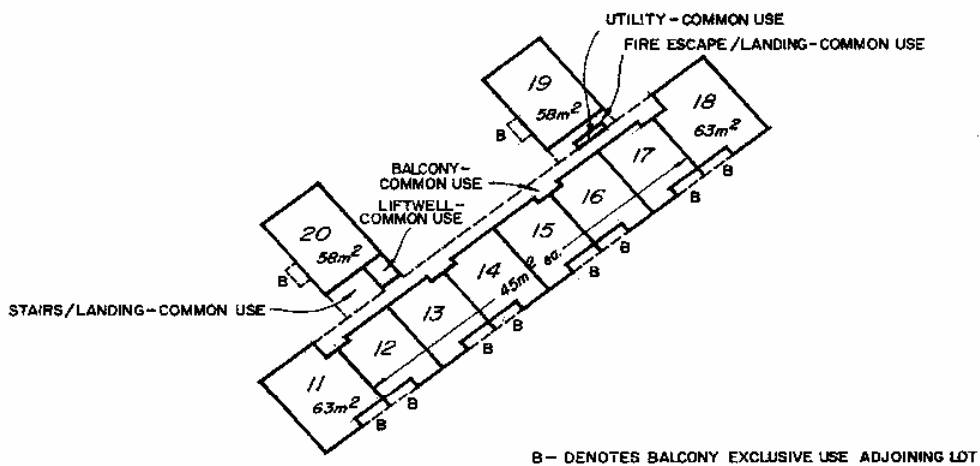
6.2 Sample floorplan

C.A. 4

SHEET No. 2 OF 6 SHEETS

STRATA PLAN No. 6991

FIRST FLOOR



SCALE 1:500

APPROVED

FOR THE PURPOSES OF THE STRATA TITLES ACT 39 OF 1968 AS AMENDED

TOWN PLANNING BOARD

*David Can*

DATE 24 APR 1979

CHAIRMAN


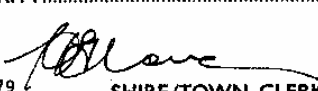
LOCAL AUTHORITY CITY OF STIRLING

*Shire-Town Clerk*

DATE 9/4/79

SHIRE-TOWN CLERK

### *6.3 Sample schedule of unit entitlements*

ANNEXURE "A" OF STRATA PLAN No. 6991					
SCHEDULE OF UNIT ENTITLEMENT		OFFICE USE ONLY CURRENT Cs. of TITLE	SCHEDULE OF UNIT ENTITLEMENT		OFFICE USE ONLY CURRENT Cs. of TITLE
LOT No.	UNIT ENTITLEMENT	VOL. FOL.	LOT No.	UNIT ENTITLEMENT	VOL. FOL.
1	1	1534-501	31	1	1534-531
2	1	1534-502	32	1	1534-532
3	1	1534-503	33	1	1534-533
4	1	1534-504	34	1	1534-534
5	1	1534-505	35	1	1534-535
6	1	1534-506	36	1	1534-536
7	1	1534-507	37	1	1534-537
8	1	1534-508	38	1	1534-538
9	1	1534-509	39	1	1534-539
10	1	1534-510	40	1	1534-540
11	1	1534-511	41	1	1534-541
12	1	1534-512	42	1	1534-542
13	1	1534-513	43	1	1534-543
14	1	1534-514	44	1	1534-544
15	1	1534-515	45	1	1534-545
16	1	1534-516	46	1	1534-546
17	1	1534-517	47	1	1534-547
18	1	1534-518	48	1	1534-548
19	1	1534-519	49	1	1534-549
20	1	1534-520	50	1	1534-550
21	1	1534-521	51	1	1534-551
22	1	1534-522	52	1	1534-552
23	1	1534-523	53	1	1534-553
24	1	1534-524	54	1	1534-554
25	1	1534-525	55	1	1534-555
26	1	1534-526	56	1	1534-556
27	1	1534-527	57	1	1534-557
28	1	1534-528	58	1	1534-558
29	1	1534-529	59	1	1534-559
30	1	1534-530	60	1	1534-560
APPROVED			TOTAL 60		
FOR THE PURPOSES OF THE STRATA TITLES ACT 39 OF 1966 AS AMENDED					
TOWN PLANNING BOARD  Date 24 APR 1979 CHAIRMAN.			LOCAL AUTHORITY CITY OF STIRLING  Date 9/4/79 SHIRE/TOWN CLERK.		

B371/1170-3M-G124




6.4 Certificate of Title for an apartment

LT. 38

Application B726072    WESTERN    AUSTRALIA

From Strata Plan 6991



REGISTER BOOK  
VOL.    FOL.  
1534    514

## CERTIFICATE OF TITLE

UNDER THE "TRANSFER OF LAND ACT, 1893" AS AMENDED  
AND THE STRATA TITLES ACT NO. 39 OF 1966 AS AMENDED

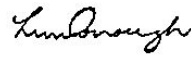
Page 1 (of 2 pages)


1534 VOL.

514 FOL.

I certify that the person described in the First Schedule hereto is the registered proprietor of the undermentioned estate in the undermentioned land subject to the easements and encumbrances shown in the Second Schedule hereto.

Dated 7th June, 1979

  
REGISTRAR OF TITLES



ESTATE AND LAND REFERRED TO

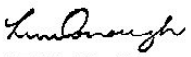
Estate in fee simple in portion of Swan Location 2 and being Lot 14 on Strata Plan 6991 and one undivided sixtieth share in the common property therein.

FIRST SCHEDULE (continued overleaf)

~~Secundus Holdings Pty. Ltd., of 37 Saint George's Terrace, Perth.~~

SECOND SCHEDULE (continued overleaf)

1. Interests notified on the Strata Plan and any amendments to Lots or common property notified thereon by virtue of the provisions of the Strata Titles Act No. 39 of 1966 as amended.

  
REGISTRAR OF TITLES

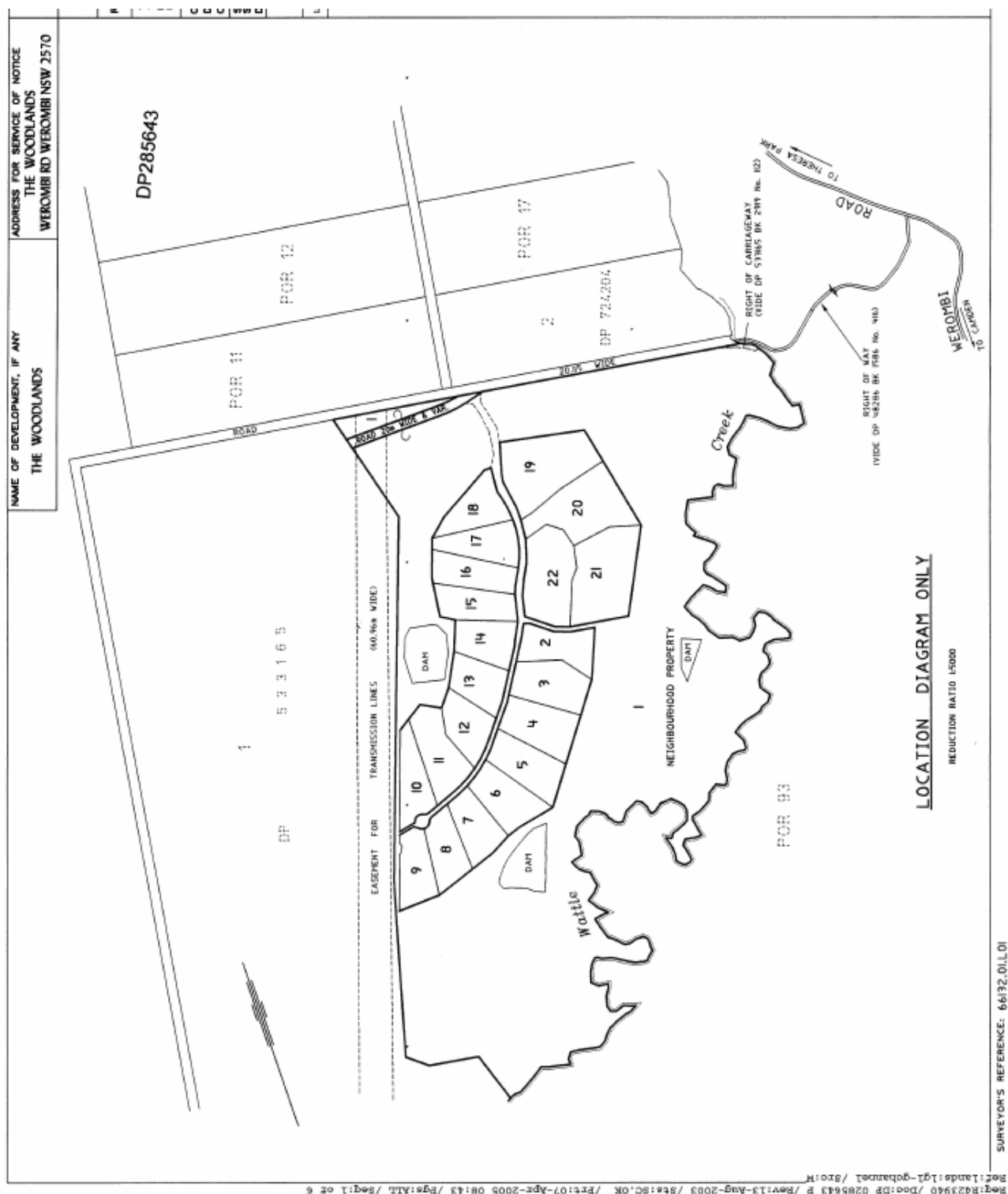
PERSONS ARE CAUTIONED AGAINST ALTERING OR ADDING TO THIS CERTIFICATE OR ANY NOTIFICATION HEREON

NOTE: RULING THROUGH AND SEALING WITH THE OFFICE SEAL INDICATES THAT AN ENTRY NO LONGER HAS EFFECT. ENTRIES NOT RULED THROUGH MAY BE AFFECTED BY SUBSEQUENT ENDORSEMENTS.

72010/12/77-45M-S/2860

Assessment of Laws and Regulations pertaining to Strata Title in Egypt

Technical Report No.4



## Assessment of Laws and Regulations pertaining to Strata Title in Egypt

## Technical Report No.4

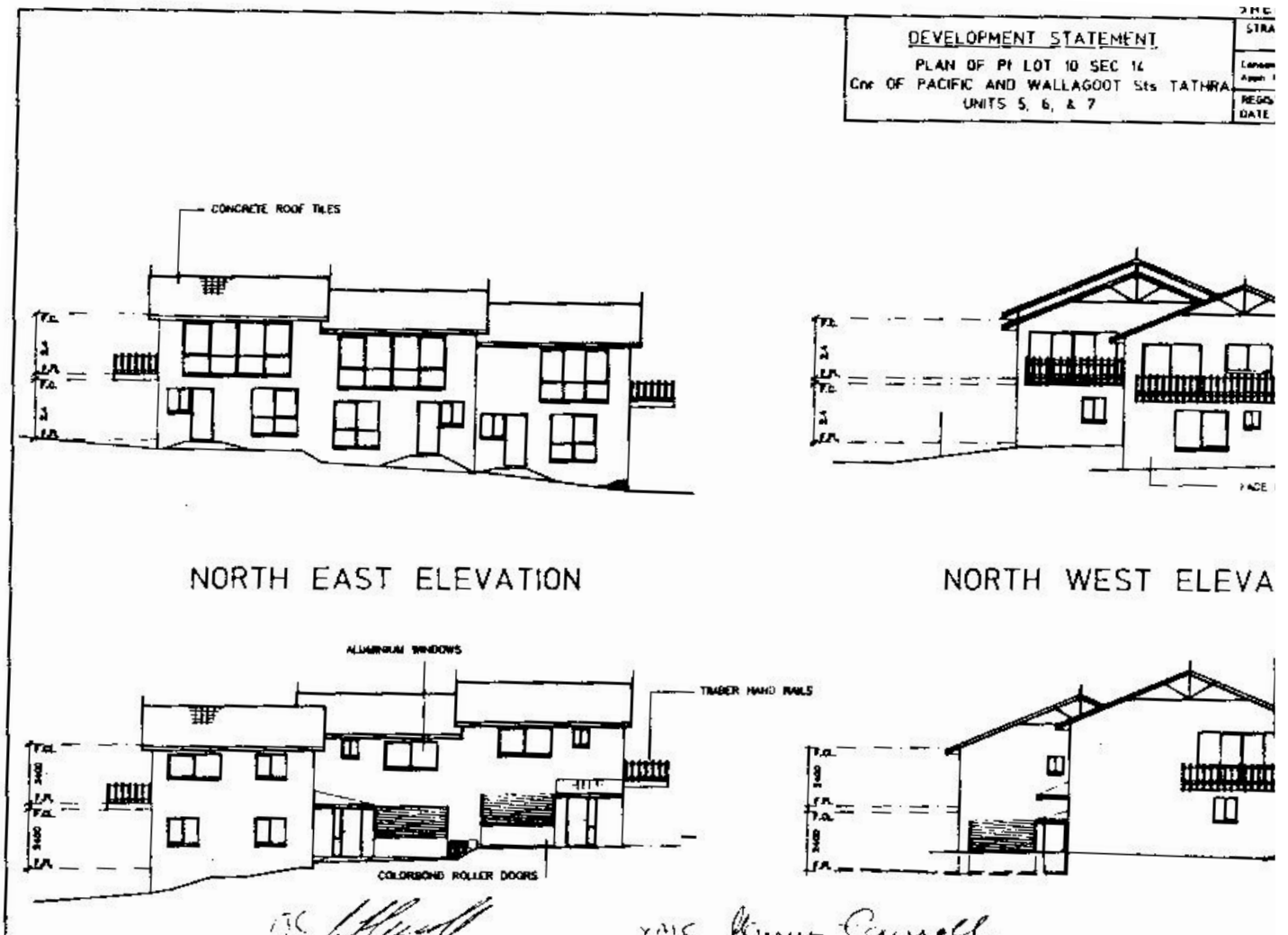
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Ref:lands:tg1-gchannel /Src:M



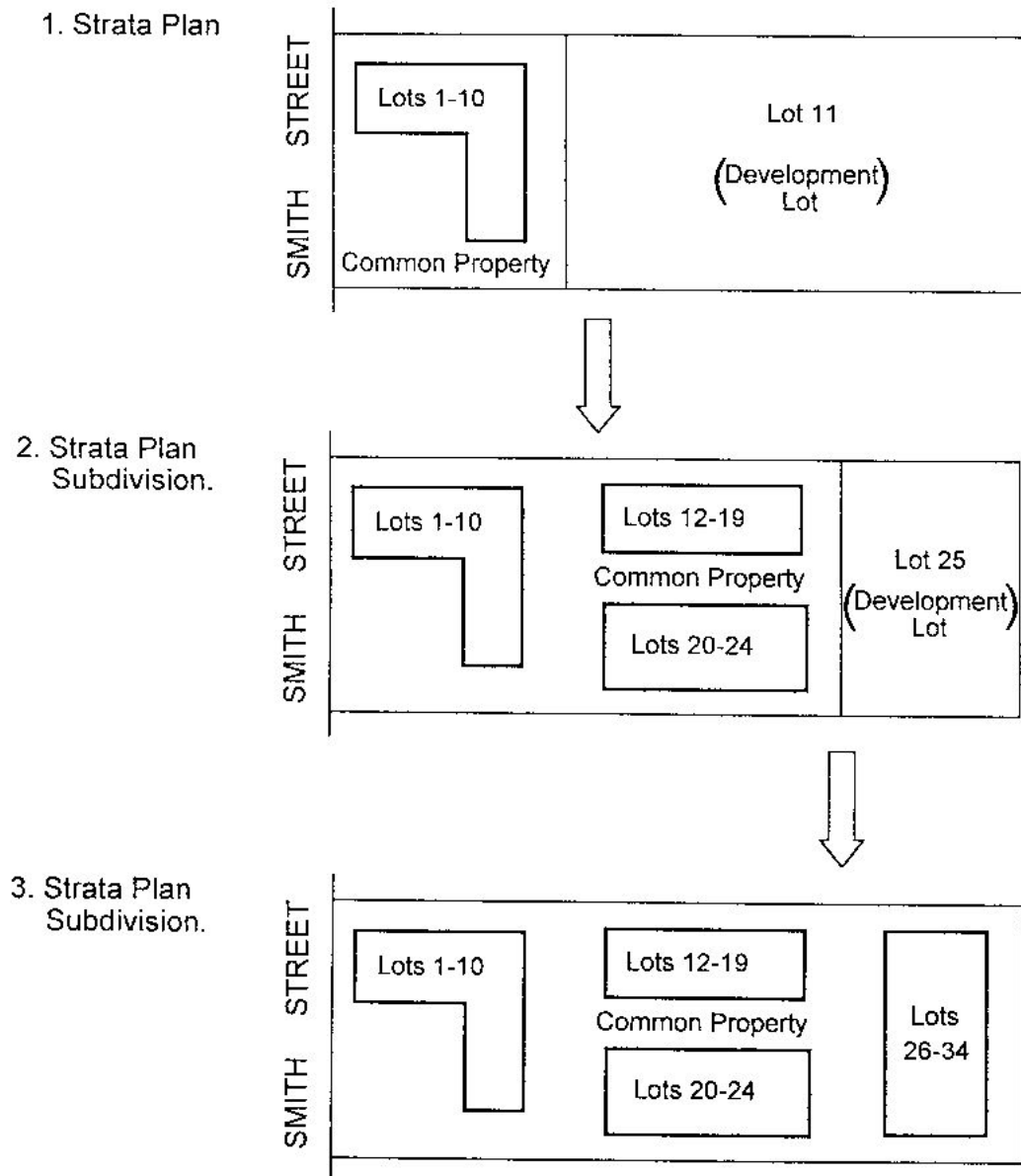




6.9 Sketches in a development statement



## STAGED BUILDING STRATA SCHEME SINGLE TIER OF MANAGEMENT

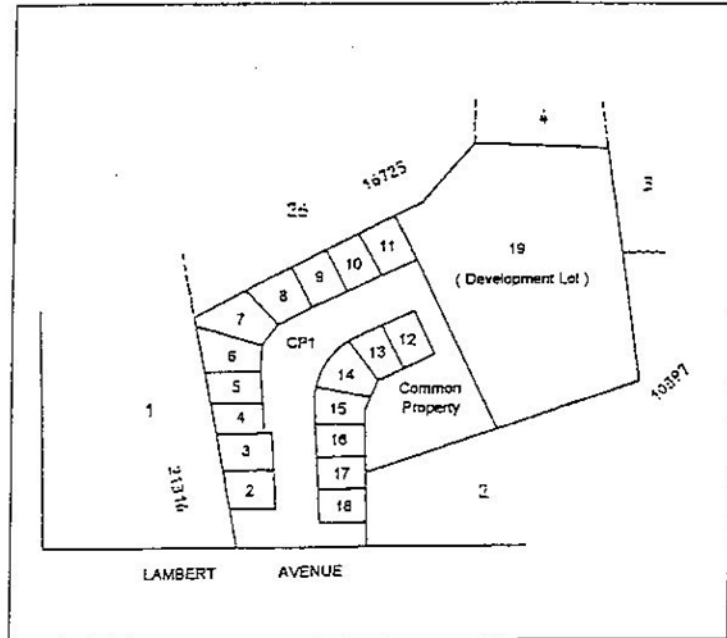


### 6.11 Illustration of staged bare strata

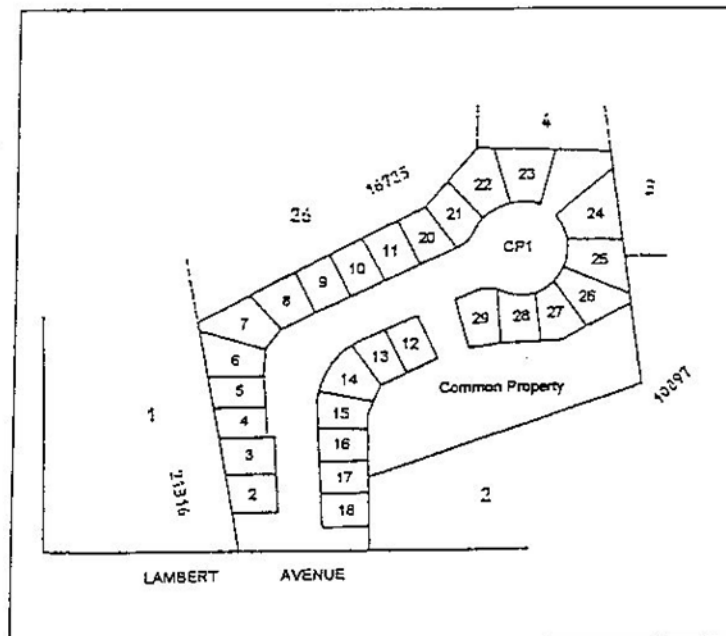
#### STAGED SURVEY STRATA SCHEME

[ Single tier of Management ]

1. Original  
Strata Plan.



2. Project  
following  
Strata Plan  
of Subdivision.



6.12 Another building strata example

